ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE	)	
INVESTIGATION ON THE	)	CAUSE NO. 39983
COMMISSION'S OWN MOTION	)	
INTO ANY AND ALL MATTERS	)	
RELATING TO LOCAL TELEPHONE	)	INTERIM ORDER ON
EXCHANGE COMPETITION	)	BUNDLED RESALE AND
WITHIN THE STATE OF INDIANA	)	OTHER ISSUES

APPROVED:

BY THE COMMISSION:
G. Richard Klein, Commissioner
Keith L. Beall, Administrative Law Judge

JUL 01 1996

On June 15, 1994, the Commission initiated on its own motion an investigation into matters relating to local telephone exchange competition within the State of Indiana. This investigation was prompted by the Commission's own knowledge of the growing need for a generic review of local exchange telephone competition issues including those issues raised in a letter from John Koppin of the Indiana Telephone Association, Inc. ("ITA") dated May 2, 1994. In the Order initiating this proceeding the Commission found that "all providers of telecommunications services within the State of Indiana and under the jurisdiction of this Commission . . . should be named Respondents in this Cause." *Order of June 15, 1994,* at 2-3. Today's Interim Order deals with one portion of the many issues surrounding the introduction of competition in the local exchange telephone market. Specifically, this Order deals with the resale of bundled local service(s).

A preliminary and prehearing Conference was held on August 19, 1994, at 9:30 A.M., EST, in Room TC10, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana pursuant to proper notice. The following Respondents appeared by counsel and participated in the prehearing conference: Smithville Telephone Company, the Indiana Exchange Carriers Association (INECA), LDDS of Indiana, Inc. (LDDS), MFS Intelenet of Indiana, Inc. (MFS), MCI Telecommunications Corp. (MCI), Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech"), LCI International Inc. (LCI), American Communications Corporation (d/b/a Indiana Digital Access) (IDA), Hancock Rural Telephone Corporation (Hancock), Gary Cellular Telephone Company, United Telephone Company of Indiana (United), Sprint Communications Company (Sprint), AT&T Communications Corp. (AT&T), Northwestern Indiana Telephone Company, GTE North Incorporated (GTE North), Sprint Cellular Company (Westel/Indianapolis Company, Bloomington

Cellular Telephone Company, Inc., Indiana Cellular Corporation, [all doing business as Cellular One]). The Office of Utility Consumer Counselor (OUCC) also appeared and participated. Petitions to intervene were filed by United Senior Action and Citizens Action Coalition of Indiana, Inc.; Hoosier State Press Association; Indiana Telephone Association (ITA); and the American Association of Retired Persons (AARP). All petitions to intervene, with the exception of the petition filed by the ITA, were granted without objection. ITA's petition was granted over LCI's objection.

The Executive Committee Process.

(1). Prehearing Conference Order: creation of the Executive Committee.

A Prehearing Conference Order was entered in this Cause on November 2, 1994. Therein the Commission established an Executive Committee. *Id.* at 3; *Order of November 2, 1994* at p. 2. That Order found that the Executive Committee should be comprised of one representative of each interested Respondent and Intervenor, and the OUCC. This Order further stated that "[a]ll members of the Executive Committee must be authorized to make decisions relating to the issues in this investigation and must be persons who are qualified to serve as witnesses at any hearings that may be held in this matter." *Order of November 2, 1994* at p. 3.

The Prehearing Conference Order provided that the Executive Committee should appoint separate subcommittees to focus on several specific issues. While the Executive Committee was directed to consider the areas in the Prehearing Conference Order, that Order also provided that the Executive Committee should have the flexibility to consolidate or expand issues as it determined appropriate. *Id.* The order gave the Executive Committee the "ultimate responsibility and authority to identify the specific issues to be discussed and resolved within each general issue category and to add or delete general topic categories." *Id.* at 4.

The Commission recognized the monumental task assigned to the Executive Committee. The Commission directed the Executive Committee to attempt to reach a consensus agreement, but, in the absence of such an agreement, to present the parties' positions and recommendations to the Commission.

Among other things, the Prehearing Conference Order also provided that the meetings of the Executive Committee would be held as noticed public hearings in this Cause. The Order directed an Administrative Law Judge (ALJ) to open the record at a noticed

hearing and advise that the purpose of the hearing was to conduct an Executive Committee meeting. The Prehearing Conference Order provided that at the close of the meeting, the ALJ should reopen the record for the purpose of providing a brief summary of these matters discussed at the meeting. *Id.* at 6. The record in this Cause demonstrates this process was followed at each successive series of Executive Committee meetings.

Finally, the Prehearing Conference Order directed the Executive Committee to conduct an investigation and to prepare and present to the Commission a comprehensive report discussing the issues and recommending specific Commission action. *Id.* at 6-7.

(2). Requests for Reconsideration.

Following the issuance of the Prehearing Conference Order, two motions for reconsideration, and responses and related requests were filed by several Respondents and Intervenors from November 22, 1994 through December 28, 1994. Primarily, the motions sought reconsideration of the appointment of Commissioner Klein as the Chairperson for the Executive Committee and the constituency of the Executive Committee. Although the Commission disagreed with contentions of the parties that Commissioner Klein's involvement would constitute improper *ex parte* contact, the February 15, 1995 Order found that the request for reconsideration should be granted in part in an effort to expedite the process. This action resulted in the appointment of Mr. Paul Hartman as the Chairperson of the Executive Committee in place of Commissioner Klein.

In its February 15, 1995 Order, the Commission reiterated that it neither expected nor required the Executive Committee to reach a consensus on all issues. "The several Executive Committee members will each have an opportunity to make their respective positions known to the Commission even if no two parties agree on any issue." *Id.* at 7. Several witnesses also commented on the record during the February 12-16, 1996 hearings that they were aware of their ability and right to file a minority report or recommendation if they had decided to do so.

On June 14, 1995, Mr. Paul Hartman, Chairman of the Executive Committee, filed a Memorandum Report requesting clarification and/or direction from the Commission about the following four procedural and structural issues involved with the Executive Committee process: (1) Objectives of the Executive Committee, (2) Openness of the Process, (3) Timetable, and (4) Executive Committee and Subcommittee Reports. With regard to the Objectives of the Executive Committee Mr. Hartman sought clarification and/or direction on the following two subtopics: (A) "Consensus"; and (B) "Recommendations vs. Defining Positions". By its Order dated June

21, 1995 the Commission responded to Mr. Hartman's requests. The Commission explained (i) that the purpose of the Executive Committee meetings and the resultant hearing(s) is to allow the Commission to hear and consider evidence pertinent to any and all matters related to local exchange competition within Indiana; and (ii) that if a consensus cannot be reached, multiple positions should be presented to the Commission. *Id.* at 2-3. This Order again urged the parties to **attempt** to reach consensus on all issues but clarified that:

> For those issues on which a consensus agreement cannot be reached (i.e., for those issues which remain in dispute at the time the Executive Committee files its Report with the Commission), the Executive Committee should not attempt to compel any parties to reach such a consensus agreement. Instead, for those issues on which a consensus agreement cannot be reached, the Executive Committee should prepare and present to the Commission in written, narrative form its analysis and recommendation for specific Commission action (including a detailed examination of the risks and benefits to each of the industry participants and the public). Those parties not agreeing with the majority should, likewise, prepare and present to the Commission, in written, narrative form, their respective analyses and recommendation for specific Commission action (including a detailed examination of the risks and benefits to each of the industry participants and the public)." *Id.* at 3-4 (original emphasis).

The Commission also elected not to engage in "micro management" and directed that the "Executive Committee to operate as it saw fit under terms of the Commission's order in this Cause." *Id.* at 5.

On August 9, 1995, Mr. Hartman filed his Second Report of the Chair of the Executive Committee ("Second Report") wherein he again requested clarification and/or direction from the Commission about procedural and structural issues involved with the Executive Committee process. The Second Report provided the Commission with the "Mission Statement" adopted by the Executive Committee, a summary of the progress of the Executive Committee, and a status report on each of the subcommittees. The Commission responded to the Second Report and the requests made therein in an Interim Order dated August 23, 1995. Therein, the Commission reaffirmed the scope of our investigation, as well as its expectation that the Executive Committee would provide an overall recommendation regarding local competition and whether and/or how it should be implemented. *Order of August 23, 1995* at p. 4.

The August 23, 1995, Order also granted the Executive Committee Chair's request that the Commission set a hearing on the Report. This request was consistent with the Commission's earlier Orders which indicated to the parties that they could "recommend that the Commission consider these matters in a formal hearing process". *Order of November 2, 1994* at p. 6. The Commission granted the request for hearing and scheduled a hearing for February 12, 1996.

The February 12-16 Hearing. At the final Executive Committee meeting on January 10, 1996, the record was opened and the presiding Administrative Law Judge addressed certain issues raised in the Fifth Interim Report and responded to questions raised by members/parties who were then present. These questions generally took the form of inquiring how the parties should present their respective positions and how the Commission should proceed. Also, there was a specific question with regard to the format the parties' positions should be in, e.g. prefiled form, written comments, etc. The presiding Administrative Law Judge indicated the Commission would like to hear testimony on both how to proceed and what the parties' respective positions were. The Commission recognized the shortened time frames and allowed the parties discretion in presenting their positions.

The Executive Committee submitted its Final Report to the Commission on January 16, 1996. The Commission issued a docket entry on February 2, 1996 clarifying the scope of the previously scheduled February 12-16, 1996 hearing. The Commission chose to specifically limit the scope of this hearing to issues related to resale of local exchange telephone services, electing to defer the many other complex interrelated issues identified in the Report. The Commission also reminded the parties that each member of the Executive Committee should be present and available to be called as a witness and examined at the February 12-16, 1996 hearing. The Commission stated its intention to call the Chair, Mr. Hartman, to be questioned by the presiding officers. Additionally, the parties were directed to prepare and file with the Commission by noon on Thursday, February 8, 1996, a "Statement of Intent to Call Witness(es)" which should, at a minimum, contain the following information: 1) the name of the intended Executive Committee member witnesses(es) that the party desires to call and examine, and 2) the specific area(s) relative to resale issues which the party intends to examine the listed witness(es).

On Thursday, February 8, 1996, several "Statement of Intent to Call Witness(es)" were filed by: the OUCC, Cellular One, MFS, AT&T, Indiana Cable Association, GTE, CompTel, MCI, and INECA. A limited number of parties, such as Ameritech Indiana, filed on February 8,

1996 a filing which did not comply with the requirements of the February 2, 1996 docket entry but rather claimed confusion as to what was generally meant by "resale issues", who was considered an Executive Committee member and whether the identification of witnesses was a prerequisite to being able to examine the witnesses.

Opening of the Evidentiary Record. A public hearing commenced on February 12, 1996 in Room TC10, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana. The proofs of publication of the notices of such hearings were incorporated into the record of this Cause by reference. The following respondents were represented at the hearing: Sprint, United, Northwestern Indiana Telephone Company, Ameritech, GTE North, Contel of the South, Inc., TCG Indiana, AT&T, MCI, Smithville Telephone Company Incorporated, MFS, LDDS, Cellular One Companies, CompTel, Gary Cellular Telephone Company, One Call Communications, Inc, Opticom, Inc. The following intervenors were represented at the hearing: Indiana Cable Television Association, Indiana Exchange Carrier Association, Citizens Action Coalition of Indiana, Inc., American Association of Retired Persons, United Senior Action, Indiana Retired Teachers Association. The OUCC was also represented at the hearing. The presiding Administrative Law Judge instructed the parties that the Commission had questions for the first 19 of the 22 persons on its witness list; it would examine the witnesses first, and then allow the parties to examine the witnesses.

Three preliminary requests were orally made on record. The first was for clarification of the purpose of the hearing. The second matter raised was a request for an informal attorneys' conference or a formal prehearing conference. Finally, a request for a continuance for the purpose of considering the Telecommunications Act of 1996 ("Federal Act" or "Act"). The Commission denied these requests. We now affirm these rulings as these requests were untimely. The February 12-16, 1996 hearing had, in fact, been scheduled at the request of the Executive Committee in August of 1995. The Commission believes the intervening six months between the Order providing for the hearing and the start of the hearing provided ample opportunity for any party who needed clarification of the purpose of the February 12-16, 1996 hearing.

We are aware that a partial request for clarification of the hearing was sought in the Executive Committee chairman's Fifth Interim Report filed on November 28, 1995. However, these Executive Committee requests were limited to what the Commission's expectations for the hearing were and how the Commission would proceed with the Cause generally. Upon opening the record on

January 10, 1996, the presiding Administrative Law Judge called for any additional requests or issues before responding to the Fifth Interim Report. None were made and the Presiding ALJ indicated that it was difficult to provide the parties with further clarification because the Commission had not yet seen the Report but advised the parties that they should be prepared to present their various positions taken in the Report at the February 12-16, 1996 hearing. Thereafter, representatives from Ameritech and LDDS Worldcom verbally requested additional definition of the presiding Administrative Law Judge's comments regarding the presentation of the respective parties' positions. Specifically, Mr. Klingerman, from Ameritech, asked what the ALJ meant by the phrase: the parties should be prepared to present their positions at the February 12, 1996 hearing and whether this meant positions on "how" to proceed or the positions as already represented in the Report. The ALJ responded that it was both how to proceed and the parties positions in the Report but again recognized that this determination was necessarily limited because the Report had yet to be filed. Next, counsel for LDDS Worldcom sought guidance on the "form" parties should utilize to present their positions. The presiding Administrative Law Judge left this to the discretion of each party. Thereafter, the presiding officers indicated the witnesses to be called at the February 12, 1996 hearing would be limited to Executive Committee members. Finally, on the record on January 10, 1996, the Executive Committee Chairman Paul Hartman made a suggestion that the Commission hold a "pre-conference hearing or something to that effect" after the Commission received the Report. The presiding ALJ responded by taking this under advisement and indicating there might be a docket entry sent out if time allowed. There were no further inquiries at that time as to any other matters related to the hearing or any other areas of confusion. A docket entry was then issued on February 2, 1996. Thereafter, Ameritech waited until the opening of the record on February 12, 1996 to finally make its request for clarification and/or a prehearing conference and continuance claiming the purpose of the hearing was unclear and therefore the Commission could not proceed. GTE North and United Seniors/AARP/CAC joined in this request in part.

The first witness called and examined was Executive Committee chairman Paul Hartman. The Executive Committee Report ("Report") was identified by Mr. Hartman and thereafter admitted into evidence over the objection of Respondents Ameritech and GTE. Over the course of the next five days of hearings other witnesses were examined by the presiding officers and made available to be examined and re-examined by all parties to the proceeding.

Post-hearing Filings. At the close of the scheduled hearings, the Commission heard requests for and thereafter granted the parties an opportunity to file post-hearing briefs and proposed orders no later than March 8, 1996. These requests mainly revolved around the need to address the new Federal Act and its effect on this proceeding. The presiding ALJ found that:

> ...the Commission would like to see briefs from the parties regarding their interpretations, implications or any comments that the federal Telecommunications Act of 1996 as well as -- well, that the federal Act has on this Commission proceeding and how this Commission should proceed in the future. That brief should be filed within 15 days, which I believe will make it March 7, 1996 -- I'm sorry, March 8, 1996; that's a Friday. In addition, I will ask that the parties file within that same time frame a proposed form of order relative to the procedure the Commission should take henceforth regarding this cause. I do want to allow the parties an opportunity also to address concerns that have been raised since the Report was filed. I think that's reasonable, and I think we've allowed examination on that topic. I will leave it up to the parties as to whether they want to do that in their proposed order or their brief that I've just described relative to the federal Telecommunications Act of 1996. With that, I trust that addresses most folks' concerns at this time.

Pursuant to the above determination, comments, briefs and/or proposed orders were filed with the Commission on March 8, 1996 by the following parties: Smithville Telephone Company, INECA, LDDS, MFS, MCI, Ameritech, LCI, IDA, Hancock, United/Sprint, AT&T, Northwestern Indiana Telephone Company, GTE North, Cellular One, United Senior Action/AARP/CAC, ITA, and the OUCC.

A review of the above on-the-record discussion reveals that the presiding ALJ specifically provided the parties the opportunity to present their respective interpretations, implications or any comments regarding the effect the Federal Act had on this Commission proceeding and how this Commission should proceed in the future. The Commission also permitted the parties to address concerns or issues arising since the submission of the Executive Report to the Commission on January 16, 1996. By allowing the parties the ability to present live testimony during the hearing and thereafter the ability to update, respond and comment on the Federal Act in the post-hearing filings, the Commission has afforded the parties ample opportunity to be heard on the issues. Several parties indicated the Act had no effect other than to support the Commission's efforts in this Cause. Most of the post-hearing filings discussed the Federal Act generally but did not

identify any measurable impact on their various positions other than to indicate resale of local service is required under Sections 251 (b) and (c) of the Act. There was a general agreement in these filings that the Executive Committee Report does provide this Commission with valuable information upon which the Commission can proceed in the area of local exchange competition. (See Ameritech Proposed Order, at 22, MCI Brief, at 8, & AT&T prop'd order, at 6). As stated by MCI in its Post-hearing Brief: "Specifically, the Federal Act has resolved many of the policy decisions that were raised in this docket. It has answered them for the Commission, but left implementation details to both the Federal Communications Commission and the states." MCI Brief, at p. 4. Other parties have described their belief as to how this Commission should proceed under the Federal Act utilizing the information and recommendations presented in the Report. All parties recognized in some way the aggressive time frames in the Federal Act and noted the obligations of state commissions in meeting these timeframes. Therefore, we find and conclude that the Federal Act assists us in narrowing the scope of the issues originally raised in this Cause and now requires us to take certain action to open up the local exchange market in a very timely manner.

Based upon the applicable law, and being duly advised in the premises, the Commission now finds as follows:

1. **Notice and Jurisdiction.** This Cause was initiated on the Commission's own motion pursuant to IC 8-1-2-58, and related statutes. According to IC 8-1-2-58 "[w]henever the commission shall believe that an investigation of any matters relating to any public utility should for any reason be made, it may, on its motion, summarily investigate the same, with or without notice." This Commission conducted a preliminary investigation and thereafter issued its Order creating this docket on June 15, 1994. The Commission then established and noticed a prehearing conference for August 19, 1994. *Order of June 15, 1994* at p. 3. Following the Prehearing Conference and the filed and verbal comments, the Commission adopted the Executive Committee process rather than a more adjudicatory hearing procedure. This was done at the parties' urging noting that in very complex areas, as here, the executive committee is the best way to deal with the many issues involved. However, the Commission emphasized the importance of the subject of this Cause by specifically requiring that each executive committee meeting "will be held at noticed, public hearings." *Prehearing Conference Order of November 2, 1994* at p. 6.

The August 9, 1995, Second Interim Report the Chair of the Executive Committee requested the Commission establish a hearing on the Report. This request was granted by the Commission setting a

hearing for February 12, 1996 (*Interim Order of August 23, 1995* at p 6&7) and noticed the same as required by law. Accordingly, due, legal and timely notices of the public hearings herein were given and published by the Commission as required by law. However, on March 8, 1996 Ameritech filed a Brief raising for the first time the issue that the Commission's did not give adequate notice of its intentions in this cause and inferred that our reference to "and other related statutes" did not include IC 8-1-2.6.

We determined in our June 15, 1994 Order initiating this Cause that, "the vast majority of the providers of telecommunications services within the State of Indiana are public utilities within the meaning of IC 8-1-2 *et seq.*" *Order of June 15, 1994* at 2. The parties have not challenged our finding that the potential for local exchange competition and its effects on the telecommunications providers and their customers falls within the purview of any matters relating to any public utility. While this Commission has declined to exercise its jurisdiction over many types of telecommunications services and providers under authority granted in IC 8-1-2.6, the parties have not challenged our determination that we have retained jurisdiction sufficient to conduct an investigation of matters pertinent to local exchange competition pursuant to this Commission's statutory authority. Public service commissions have the power themselves to initiate inquiry or, when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for the transportation, communication and other essential public services. *Bowles v. Indianapolis Rys.*, D.C.1947, 64 F.Supp. 865, affirmed 154 F.2d 218.

Additionally, this Commission has been provided broad authority to regulate telephone utilities. See *Daviess-Martin Co. etc. v. Pub. Serv. Comm.* (1961), 132 Ind. App. 610, 174 N.E.2d 63. IC 8-1-2-4, 8-1-2-54, 8-1-2-58, 8-1-2-59, 8-1-2-88, and 8-1-2.6 are some statutes providing such authority. This broad authority was exercised by the Commission to initiate and conduct proceedings such as the case at hand. IC 8-1-2-58 provides the Commission authority to conduct, on its own motion, an investigation of any matters relating to any public utility without need of notice or a hearing but does not delineate any procedures to be utilized by the Commission. The Commission specifically made a determination under IC 8-1-2-58 that there was sufficient basis to initiate a formal docket giving rise to this Cause. In initiating this Cause the Commission specifically identified Sec. 58 **and related statutes** as the basis for our jurisdiction. (emphasis added). Several related statutes have already been cited in earlier docket entries and

Orders in this Cause, including: IC 8-1-2-59, IC 8-1-2-69, and IC 8-1-2.6. The latter of these identified statutes, namely IC 8-1-2.6 clearly and unmistakably relates to the very substance of this Cause: a competitive environment in the provision of telephone services. IC 8-1-2.6-1 reads:

Section 8-1-2.6-1 Legislative Declaration.

Section 1. The Indiana general assembly hereby declares that:

(1) the maintenance of universal telephone service is a continuing goal of the commission in the exercise of its jurisdiction;

(2) Competition has become commonplace in the provision of certain telephone services in Indiana and the United States;

(3) Traditional commission regulatory policies and existing statutes are not designed to deal with the competitive environment;

(4) An environment in which Indiana consumers will have available the widest array of state-of-the-art telephone services at the most economic and reasonable cost possible will necessitate full and fair competition in the delivery of certain telephone services throughout the state; and

(5) Flexibility in the regulation of providers of telephone services is essential to the well being of the state, its economy, and its citizens and that **the public interest requires that the commission be authorized to formulate and adopt rules and policies as will permit the commission, in the exercise of its expertise, to regulate and control the provision of telephone services to the public in an increasingly competitive environment,** giving due regard to the interest of consumers and the public and to the continued availability of universal telephone service. (emphasis added).

The Commission is bound to carry out the directives of applicable statutes whether or not they are cited in this case. Regardless, IC 8-1-2.6 is one of the "related" statutory sections

referenced by this Commission in this Cause. IC 8-1-2.6 gives this Commission very broad authority and very clear directives. This broad authority was utilized by the Commission and unchallenged in its earlier Order of June 5, 1996 in this matter wherein the Commission established certain guidelines for filings made pursuant to the Federal Act. We find that the provisions of this Order and the underlying proceeding certainly promote regulation consistent with the competitive environment. Therefore, the Commission finds that we have jurisdiction over the providers of telecommunications services within the State of Indiana and the broad subject matter of this proceeding under several statutory sections including IC 8-1-2-58, IC 8-1-2-59, IC 8-1-2-69, and IC 8-1-2.6. Additionally, as discussed more fully elsewhere we further find that this proceeding is a proceeding under IC 8-1-2.6 and also the Federal Telecommunications Act of 1996.

2. **Ameritech Motion/Complaint**. Ameritech filed, along with its proposed form of order, a "Brief in Support of its Proposed Order" on March 8, 1996 setting forth for the first time several bases upon which it alleges the Commission must take no further action and conclude this docket. The Commission is somewhat perplexed at this filing so late in these proceedings especially considering the tremendous support Ameritech gave to the initiation of this Cause in general, the executive committee process and what could be accomplished by it and this Commission thereafter. Nonetheless, this Brief now directly disputes the Commission's ability to take any action in this Cause and alleges the Commission failed to take appropriate due process steps. We, therefore must now address the assertions contained in the Ameritech Brief before making our findings.

(a). **Ameritech Indiana Brief.** First, and foremost in Ameritech's brief is the claim that the Commission's investigation in this Cause was an "informal" investigation. Ameritech never defines what an "informal proceeding" is nor where this moniker comes from. Ameritech claims this "informal" process does not allow the Commission to take any action unless and until a more formal process is instituted. Ameritech asserts the following specific bases for their position:

1). The "informal" Section 58 investigation cannot be the basis for adjudicating "issues related to resale of local exchange telephone services." 2). The Commission has not complied with the statutory procedures for a formal hearing and adjudication. 3). The Commission did not act impartially by allegedly sponsoring certain exhibits, by asking leading questions and by calling the majority of the witnesses at the February 12-16, 1996 hearing. 4). Before the Commission embarks upon making any statements of general

applicability based on the current record the Commission should comply with the statutory requirements of rulemaking. 5). There is insufficient evidence of record to allow the Commission to make any basis and ultimate findings of fact or do anything **including** making a determination to initiate further proceedings. 6). Finally, Ameritech alleges the Commission is somehow failing to take into consideration the new Federal Telecommunications Act of 1996.

(b). **Discussion.** We will address each of these allegations not necessarily in the order set forth above. In the Order initiating this Cause, the Commission established that "[t]he purpose of this investigation, and its resultant hearings, is to allow the Commission to hear and consider evidence pertinent to any and all matters related to local exchange competition within the State of Indiana and the positions of all potentially affected parties." *Order of June 15, 1994* at p. 3. The Commission also found at that time that it has jurisdiction over the subject matter and the parties to this proceeding. Throughout the several Orders issued in this cause, there has been no challenge to the Commission's determination of jurisdiction over any or all parties involved herein nor the subject matter involved, until now. Ameritech now, in its post-hearing filings, challenges the Commission's jurisdiction on several grounds largely related to its alleged lack of notice, and due process concerns. The concerns raised by Ameritech appear to be more preemptory to certain Commission action, but due to the expansive application to any and all Commission action in this Cause we must generally address these allegations. The Commission reaffirmed its previous determination that it has jurisdiction over the subject matter, the parties, and the requests made by the Executive Committee five (5) separate times in its Orders dated November 2, 1994, February 15, 1995, June 15, 1995, August 23, 1995, and June 5, 1996.

Ameritech argues in its post-hearing filing that it was not afforded adequate notice as to what the Commission intended to do following the Executive Committee/investigative phase of these proceedings. Ameritech claims that the Commission cannot issue an Order absent a formal proceeding initiated under I.C. 8-1-2-59 or 8-1-2.6. Ameritech does not dispute that this Commission has the statutory authority to issue an Order as we are doing in this Cause, rather it alleges we did not follow correct procedure. The remaining issue presented by Ameritech then is whether there was a "formal" hearing to allow the parties to be heard. Ameritech now claims, after the close of the record, that the hearing of February 12-16, 1996 was somehow not "formal" enough. The Commission established the February 12, 1996 hearing at the request of the Executive Committee, including the Ameritech representative, six

months prior to the hearing. See Order dated August 23, 1995, at 7. No separate request was made by Ameritech for a "formal" hearing even though our Prehearing Conference Order specifically provided the opportunity for such a request. See Ameritech Brief, at Page 10. Ameritech then concedes in its Brief that the: "Executive Committee, however, made no such specific recommendation." Id. What Ameritech did not address in its Brief is its own failure to request a hearing if it believed such a hearing was so important to its interests. Ameritech does not dispute the fact that this Commission has provided notice and ample opportunities for each party to be heard. If a party chooses not to exercise those opportunities this Commission cannot later be held responsible for such a failure.

Along similar lines, Ameritech next complains that the February 15, 1995 Order in this Cause referred to "the adjudicative phase of this proceeding which will likely follow" but complained that the same Order contained no findings or ordering paragraphs initiating any adjudicative proceeding. We find also this argument by Ameritech to be equally incorrect. As discussed above, Ameritech first recognizes the Commission's Order providing the opportunity to request a formal hearing process. It next states that no such request was made and then complains **after** the hearing is over. Although not necessarily required to do so, the Commission provided Ameritech an opportunity to examine the witnesses called at the February 12, 1996 hearing. A review of the record indicates Ameritech's counsel actively examined several witnesses. The Commission is perplexed how Ameritech can now turn around and complain that it was not afforded adequate due process rights by the Commission.

Ameritech goes on to complain that the Commission did not provide adequate notice of the matters to be considered by the Commission in this investigation. The Commission again finds that argument unpersuasive in that the Commission specifically advised the parties that they would be in control of what issues would be considered in this investigation via the Executive Committee process. Specifically the Commission stated that:

> While the Executive Committee should consider the foregoing areas, it should have the flexibility to consolidate or expand issues as it determines appropriate, subject to the limitations set forth herein. *November 2, 1994 Order, at* p. 4.

Further, the Commission reiterated this point in its Order on Reconsideration dated February 15, 1995, that the parties should

not be bound by the issues presented by the Commission in the November 2, 1996 Prehearing Conference Order. It is clear from the caption and Orders in this Cause that the parties were on notice that this was a proceeding into any and all matters relative to local exchange competition. Ameritech's representative on the Executive Committee, David Klingerman, actively participated in the Executive Committee process and should have been well aware of the issues being discussed therein.

Ameritech next attempts to argue in its Brief, as it did at the February 12, 1996 hearing, that it was not given "sufficient" notice that the parties would be "expected" to examine witnesses, submit evidence or otherwise actively participate in the February 12, 1996 hearing. The Commission certainly had no expectations regarding who would and who would not be participating in this matter. The Commission merely gave notice of its intent to pursue this investigation and left it to the parties to determine their own level of involvement. As a further accommodation for the benefit of the parties, the Commission issued a docket entry on February 2, 1996 providing an opportunity for parties to call and examine executive committee member witnesses. Ameritech provides no convincing explanation for its delay in raising these concerns at the beginning of and more fully after the February 12-16, 1996 evidentiary hearing. Ameritech's argument regarding a lack of notice, following its active participation throughout this proceeding, is wholly unpersuasive.

Ameritech next complains that it was not provided an opportunity to prepare its case or prepare cross-examination of other witnesses in this matter. This position is very confusing in light of Ameritech's support of the executive committee process and the several orders and docket entries issued in this Cause. First, and foremost, the Commission indicated the Executive Committee process would be "relatively informal and designed to provide a forum for the gathering of information and determining the respective positions of the several parties." Order of February 15, 1995, page 5. However, as we discussed in a subsequent order, the Executive Committee process was chosen at the parties request in lieu of a more adjudicatory proceeding. (See June 21, 1995 Order). Further, we cautioned any party or potential party that should they choose not to participate "actively or in a timely fashion in this initial phase, it has no guarantees that its issue(s) will be presented for later consideration by the Commission. If a party does not choose to participate, we can only assume that the party either believes its issues and concerns will be presented by another active party or that it does not have any issues to be addressed." June 21, 1995 Order Cause No. 39983, page 6. Therefore, Ameritech by choosing the executive committee

approach relinquished the opportunity to prepare an adjudicatory case by choosing instead the ability and obligation to present this in a different fashion through the Executive Committee process.

Finally on this argument, in the Commission's Prehearing Conference Order in this matter, it was abundantly clear that the Commission intended to take action following the Executive Committee process wherein we stated at page 2 that:

> we also find that, based on our past experience with other very complex proceedings, an Executive Committee, "responsible for the formation of appropriate subcommittees and the conducting of appropriate workshops" (id.) **will greatly add to the development of a record upon which public interest finding can be made."** (emphasis added)

Ameritech also alleges and complains that the Commission failed to comply with the requirements of a rulemaking under IC 4-22-2 *et seq.* We are aware of nothing which requires this Commission to act by way of a rulemaking in circumstances such as the case at hand. In fact, the Commission has the authority to make the types of determinations it has done herein by Order notwithstanding consideration of the intervening Federal Act and the aggressive time frames contained therein. One of the compelling reasons presented to this Commission and supported by Ameritech (as evidenced in its proposed prehearing conference order) to initiate this proceeding was to allow the Commission to create generic guidelines and avoid an ad hoc adoption on an individual basis. This recommendation was accepted and incorporated by the Commission in its Prehearing Conference Order of November 2, 1994. Now Ameritech attempts to object to the very process which it joined in recommending to us. We find this complete change in position taken by Ameritech after the close of the record self serving at best and disingenuous. Even if we were to accept Ameritech's argument regarding the general principles of notice and an opportunity to comment, the Commission **did** publish notice of several stages of this proceeding including all hearings involved and gave all interested parties an opportunity to participate and comment.

Ameritech also argues that this Commission did not act impartially by sponsoring exhibits and asking leading questions. First, IC 8-1-1-5(b) provides authority to this Commission to request a report such as the Executive Committee Report that was later filed and admitted into the record herein as long as the Commission allows examination on the report. Ameritech was given the opportunity to call witnesses and examine each witness called at the hearing. Further, IC 8-1-1-5(d) and other related statutes

gives this Commission the discretion to question any witnesses called, especially considering that this was a Commission initiated proceeding.

The next argument offered by Ameritech is a claim that there is insufficient evidence to allow this Commission to make any findings of fact. This is clearly not supported by the record in this Cause. As mentioned elsewhere in this Order, there was a substantial amount of information presented in the Report and also at the hearing. In addition, we were asked to take administrative notice of the new Federal Act. Accordingly, we find this argument by Ameritech without merit. Finally, Ameritech claims that this Commission is somehow acting without consideration of the Federal Act. Such an allegation makes no sense. The Federal Act is now the law of the land and this Commission is required to carry out the directives set forth in the Act. This Order, as well as our prior Order of June 5, 1996, is in furtherance of the Federal Act and its mandates. Therefore, Ameritech's final claim is incorrect.

The several arguments presented by Ameritech as to why the Commission cannot proceed generally are self serving and inconsistent with the public interest provisions contained in both Indiana Law as well as under the Federal Act. Finally, we cannot delay in acting because this could be considered an intentional barrier to new competitors entering the market which is prohibited under Section 253 of the Act. Therefore, the Commission finds that the general claims raised by Ameritech in its Brief of March 8, 1996 are unpersuasive. Ameritech actively participated at all stages of this proceeding. It was given every opportunity to be heard in the Executive Committee process, at the hearing and in its post-hearing filings.

3. **Telecommunications Act of 1996**. On February 8, 1996, President Clinton signed momentous telecommunications reform legislation. This enactment, known as the Telecommunications Act of 1996 ("Federal Act " or "Act"), allows local phone companies, long distance carriers, and cable television companies to compete against each other subject to the conditions set forth in the Act. The Federal Act sets forth procedures, standards and aggressive timetables for the timely implementation of the Federal Act by the Federal Communications Commission ("FCC") and State Commissions.

In pertinent part, the new law imposes a general duty on telecommunications carriers (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established by the TA 96. The Federal Act

imposes duties on all local exchange carriers with regard to: (1) resale; (2) number portability; (3) dialing parity; (4) access to rights-of-way; and (5) reciprocal compensation. Section 251 of the Federal Act imposes additional obligations on incumbent LECs, including the duties: (1) to negotiate; (2) to provide interconnection; (3) to provide access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory; (4) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; (5) to provide reasonable public notice of changes; and (6) to provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for collocation.

The Federal Act also exempts certain rural telephone companies from the additional obligations imposed on incumbent LECs until a State commission determines otherwise in accordance with the procedures and standards set forth in the Federal Act. Section 251(f)(2) of the Federal Act also provides an opportunity for certain small LECs to petition for and receive from a State commission a suspension and modification of the LEC's duties and obligations imposed by Sections 251 (b) and (c) of the Federal Act to the extent that such action (A) is necessary (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience, and necessity.

Under the regulatory framework adopted by the Federal Act, this Commission is directed to review and approve agreements negotiated by the telecommunications providers and to serve as an arbitrator when requested to do so. The Federal Act sets forth the procedures, standards and time-frames for negotiation, arbitration, and approval of agreements. *Section 252.*

The resale pricing standards section of Section 252(d) sets forth the following standards for wholesale prices for telecommunications service. Section 252(d)(3) provides that for purposes of Section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the LEC.

Section 252(e) sets forth the grounds for the rejection by a State commission of any interconnection agreement. These

provisions provide that the State commission may only reject (A) an agreement (or any portion thereof) adopted by negotiation if the State commission finds that (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. *Section 251(e)(2)(A)*.

A State commission may only reject an agreement (or any portion thereof) adopted by arbitration if the State commission finds that the agreement does not meet the requirements of Section 251, including the regulation prescribed by the FCC, or the standards set forth in subsection (d) of section 252. *Section 252 (e)(2)(B)*. The Federal Act directs the FCC to complete within 6 months all actions necessary to establish the above referenced regulations.

Section 252(f) provides discretion for a Bell operating company to prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of resale under Section 251 and the regulations thereunder and the standards applicable under this section.

Under the Federal Act the Commission may impose, on a competitively neutral basis and consistent with Sections 152(b), 254 and 601(c)(1), requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. *Section 253(b)*. Pursuant to Section 261 and 601(c)(1) of the Federal Act this Commission may enforce state regulations provided such regulations are consistent with the Federal Act.

Pursuant to Section 254(f) of the Federal Act, this Commission may adopt regulations not inconsistent with the FCC's rules to preserve and advance universal service. The Federal Act mandates that "[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. [This Commission] may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within [Indiana] only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." *Section 254(f)*.

Section 254(h) concerns the provision of telecommunications services to health care providers in rural areas, educational providers and libraries.

Section 254(i) of the Federal Act provides that the FCC and the States should ensure that universal service is available at rates that are just, reasonable, and affordable. Section 254(j) concerns lifeline assistance; and Section 254(k) prohibits subsidies of competitive services. This subsection provides that "the [FCC], with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." *Section 254(k).*

Finally, the Federal Act contains safeguards for the protection of customer information. The Federal Act establishes rules to ensure that the Bell operating companies protect the confidentiality of proprietary information they receive and restrict the sharing of such information in aggregate form with any subsidiary or affiliate. The Federal Act imposes a duty on all telecommunications carriers to protect the confidentiality of proprietary information of other common carriers and customers, including resellers. *Section 222.*

This synopsis of some of the relevant portions of the Federal Act demonstrates: the scope of the Federal Act is enormous, the timetable is compressed and this Commission has a vital role in the successful and timely implementation of this new law. It is within this State and Federal regulatory framework that the Commission must now consider the future course of this cause.

4. Hearing on Executive Committee Report and Federal Act.

The Executive Committee work culminated in the filing of the Report on January 16, 1996, three weeks prior to the enactment of the Federal Act on February 8, 1996. However, the Executive Committee members were keenly aware of the pending federal action. The Commission's hearing occurred on February 12-16, 1996 ("Hearing"), barely one week after the Act became law. Several parties commented on the Federal Act but voiced concerns relative to the limited time to review and consider the Act and how it effected their work in the Executive Committee process. Acknowledging these concerns the presiding ALJ invited and encouraged all parties to interpret and comment on the impact of the Federal Act in post-hearing briefs at the conclusion of the hearing. Generally, the witnesses called at the Hearing agreed

that the scope of the issues, recommendations and information contained in the Executive Committee Report was good. Mr. Hartman testified that the Report provided the issues and concerns of the parties in a single document.

At the February hearing Mr. Hartman and the majority of the Executive Committee members who testified agreed that the process which produced the Executive Committee Report was an open process wherein all parties had ample opportunity to participate and make their positions, concerns and recommendations known. This belief was shared by several other member witnesses. These witnesses also testified that they were aware that the Executive Committee process was their opportunity to raise their concerns and make recommendation upon which the Commission would take action.

Mr. John E. Koppin, President of the Indiana Telecommunications Association, testified that the possibility of attaining consensus was significantly constrained by the corporate positions of the parties which placed limitations on the participants. *Tr.* II-103. However, in response to questioning from the bench regarding each member's opportunity to present his/her respective positions and recommendations and be heard, Mr. Koppin indicated each did have such an opportunity. In fact, Mr. Koppin testified that he was aware of his ability to file a minority report if he believed his position was not adequately represented in the Final Report.

At the Hearing some parties claimed that their positions set forth in the Report might have changed as a result of the enactment of Federal Act, the passage of time, or the educational process of the Executive Committee. *Tr.* AA-49, BB-46-47, 90-91. The Commission gave each of the parties the opportunity to update its position at the hearing and later in post-hearing filings. Tr. KK-74-75. Additionally, counsel for Ameritech specifically requested the opportunity to make a post-hearing filing to"address the new federal law as well as the many issues related to resale". *Tr. KK-73.* In general, each witness recognized the fact that the Federal Act mandates resale of services offered at retail. Many of these witnesses offered their respective interpretations of the resale provisions contained in Sections 251 and 252 of the Act.

Mr. Hartman further testified that there are parts of the Executive Committee Report that look at "resale" differently. *Tr.* AA-52. Mr. Hartman explained that the term "resale" has different meanings to different parties and to interpret the viewpoints on resale you need to ask the individual party. He further indicated that it was not always clear that when a party was discussing resale whether this was referring to bundled or unbundled resale.

Ameritech's representative and witness at the Hearing, Mr. Klingerman, explained that the Executive Committee "didn't consider the impact on resellers as we went through each and every issue and the implication that each issue that was discussed might have on resellers versus facilities-based providers." *Tr.* CC-92. Mr. Klingerman testified that resale is a method to initiate local exchange competition, one of the methods that was discussed in the Executive Committee and that he recommended a group of related topics should be discussed in conjunction with what he referred to as the "initiation of resale of service." *Tr.* CC-93.

Two significantly different "implementation time lines" are generally provided in the Executive Committee Report. *IURC Ex. 1, ES*, p. 6. The time line prepared by INECA, STC, NITCO, Tri County, GTE, Ameritech, the OUCC and the Residential Consumers, *IURC Ex. 1*, III, E, 1, developed a framework to address all 29 issues; the time line prepared by AT&T, MCI, MFS, S/U, LDDS Worldcom, and CompTel, *IURC Ex. 1*, III, E, 2, contained substantially less detail and focused on the steps necessary to turn up the first customer for service from a competitive provider. *IURC Ex. 1*, p. 6. During the hearing, Mr. Sarah could not explain how he envisioned the new entrants' time line would actually work with regard to what would be resolved when, [*Tr.* HH-60] but Mr. Sarah agreed that under the new entrants' time line, AT&T would have an affirmative obligation to move through both tracks set forth on the new entrants' time line for resale certification. *Tr.* HH-59. These two tracks were: 1) certification, and 2) tariffing and other regulatory issues. (See Report, Sec. III, E2, New Entrant's Timeline). He also acknowledged that in order to obtain certification for local exchange services in Indiana, AT&T should be required to demonstrate that it has the financial, managerial, and technical wherewithal to satisfy its public utility operations. *Tr.* HH-53.

The several witnesses had varying degrees of familiarity with the provisions of the Federal Act, and most witnesses who testified about the new law cautioned that they were still in the analysis process. However, many witnesses testified that they were generally familiar with the resale provisions of the Act. Mr. Sarah testified that AT&T is still analyzing the impact of the new Act and did not have a definite answer on how it impacts the positions taken by AT&T in the Executive Committee Report. *Tr.* HH-44. Mr. Klingerman testified that the Federal Act "probably ends the debate on a lot of issues that would have appeared in the Executive Committee Report." *Tr.* CC-13. Mr. Klingerman explained that "the federal law identifies that Ameritech would offer resale on all of its retail services provided to end-users, it identifies that the resale tariff would be constructed based on wholesale -- quote, wholesale prices, and that those wholesale prices would be

based on the retail price less avoidable cost." *Id.* He explained that Ameritech intends to comply with the law and the FCC's regulations.

The use of price floors, the avoidance of inter-organizational subsidies and the pricing requirements of the Federal Act were also addressed during the course of the Hearing. Mr. Klingerman recommended that pricing floors, computed using the Total Service Long-Run Incremental Cost (TSLRIC) methodology should be used by resellers and facilities-based providers. *Tr.* CC-30-31. Mr. Ream testified that the resale of services that were currently priced below cost would adversely impact the LEC. *Tr.* GG-22, 71-72. Mr. Schoonover testified that "[i]ntuitively, we believe that in many instances, the local rates charged by the local exchange carriers may well be below the incremental level, and while we have not performed specific studies to identify that, we can look at the loop costs of these individual companies and see that without looking at any other costs, that their loop costs are themselves higher than the local service rates charged by some of the companies." *Tr.* FF-60, 71, 88. Various witnesses indicated there is a difference between determining TSLRIC and determining wholesale rates on the basis of retail rates less avoided cost under the Federal Act. *Tr.* II-63. Mr. Payne clarified the Federal Act requirement that wholesale rates should be computed on the basis of the retail rate less avoided cost is the same as net avoidable cost. *Tr.* II-69.

Another area of concern raised by Mr. Klingerman under the Federal Act was the ability of new entrants to offer one-stop shopping, which he defined as offering residential and business customers a full range of telecommunications services which would include local service, intraLATA toll calling, and interLATA toll calling. *Tr.* CC-87-88. He believed that there was a great deal of consumer interest in having the advantage of acquiring all types of telecommunications services from one provider and that this is a strategic initiative that many of the new entrants intend to pursue. *Tr.* CC-88. Mr. Klingerman further explained that were entry by competitors to occur in advance of the FCC promulgation of rules and Ameritech's compliance therewith, Ameritech would be significantly inhibited without a major component interLATA toll of that one-stop shopping capability. *Id.*

The Commission asked numerous witnesses about "calling scopes" and there was a range of responses. At one end was Mr. Klingerman's testimony that because the wholesale tariff is essentially designed to mirror the retail service, that the calling scope available to the retail customer and the calling scope that would be included in the wholesale tariff offering would be the

same. *Tr.* CC-35 At the other end, Mr. Schutz testified that "generally, new entrants should not be required to service the same area or provide the same calling scope as incumbent LEC; however, I guess one of the trade-offs with being something other than a facilities-based provider, in order to trade-off in the resale environment, would be that, in that case, they would be required to cover the same territory, so to speak, and offer the same calling scope as the incumber LEC. If, at a minimum, if a reseller were to want to expand the calling scope to include other territories, they may be free to do that, which would provide another option for the customer, but in that situation, they would need to make whatever arrangements they felt necessary to have the facilities provided to offer additional calling scopes beyond what the incumbent LEC was offering." *Tr.* EE-12-13.

The Commission also asked numerous witnesses about directory listings. Mr. Klingerman testified the coordination with additional providers would increase the cost of producing the directory. *Tr.* CC-47. Mr. Ream and Mr. Schutz agreed. *Tr.* GG-34-35, EE-18. Mr. Sarah testified that AT&T's position was that they "should be afforded the opportunity to have our customers listed in the incumbent's telephone directory" and that AT&T "would certainly pay the cost of whatever that may be." *Tr.* HH-50. MCI's Mr. Carl D. Giesy, agreed that MCI would pay such costs provided they were reasonable. *Tr.* KK-25.

Finally, the impact of competition on rural areas or small LECs was noted throughout the week. For example, Mr. Dwayne R. Glancy, Treasurer and Chief Financial Officer of Smithville Telephone, stated that the risks to customers of small companies outweigh the benefits of resale. *Tr.* JJ-20-21. Mr. Schoonover testified that it is not an unreasonable expectation that the "small company wouldn't even attempt to begin to start the process until a bona fide request is placed on the small LEC and then provide a reasonable period of time once we have an understanding of what that competitor is looking for in order to offer a price." *Tr.* FF-74-75.

5. **Discussion and Findings.** The Federal Telecommunications Act of 1996 directs this Commission to allow competition in the local exchange market. It is no longer a question of whether competition should occur, but when and how. While Congress has issued specific directives in the Act it left State Commissions the responsibility to determine the process to accomplish competition at the local level in a timely but deliberate and considered fashion. In undertaking this duty, this Commission has relied heavily on the Executive Committee process and the Report filed with this Commission on January 16, 1996. We have considered all

of the views of the participating parties in light of the Commission's own policy goals and objectives and the Federal Telecommunications Act of 1996.

In a time of transition such as the case here, utility regulation is not a topic which fits tidily within a formal adjudicatory process. The parties herein recognized this when recommending that the Commission process this matter using the Executive Committee approach. The state legislature has recognized this as well by bestowing upon this Commission the authority to utilize its special expertise and abilities to not only make factual determinations but also provide policy directions and considerations for the industry as a whole under IC 8-1-2.6 *et seq.* This is what is involved in the case at hand. We originally set out to review the entire local telephone exchange process in this State and consider whether it would be appropriate to move toward competition and, if so, how to accomplish that movement in an orderly and deliberate manner. The various parties assured us the executive committee process was the best way to accomplish this. (See Orders in Cause No. 39983, dated June 21, 1995 & August 23, 1995). Now that the Federal Act has been enacted, we must exercise our authority to implement the Federal Act while balancing the interests of the parties and the public interests as consistently as possible with Indiana law.

The Executive Committee Report which compiled the positions, concerns and recommendations of the parties on myriad issues associated with local competition has been an invaluable tool in our decision making process, and will continue to provide direction as the telecommunications industry moves forward to fair and full local exchange competition. The Executive Committee process advanced by the parties and later adopted by the Commission has afforded the parties an opportunity to explore significant matters without the strictures of a more adversarial proceeding. This allowed the parties the ability to present to the Commission a vast amount of information and recommendations quickly, which has proved to be essential in this area in light of the new Act. The Commission and the participants in this Cause have the substantial benefits of advance consideration of many of the complex issues and well reasoned recommendations which will assist the Commission in taking timely action consistent with the responsibilities of the Commission under the new Federal Act and Indiana law. The Commission does recognize the speed with which competitive matters have already evolved and expects this to continue. Because of this we are not afforded the luxury of just sitting back and waiting to see how things ultimately work out. We must be just as proactive as we were in timely initiating this Cause to be able to fulfill our statutory obligations under IC 8-1-2.6 and related statutes to

the telephone industry and the consumers in the State of Indiana.

We can now utilize the valuable information and recommendations from the Report to begin the steps necessary to comply with the Federal Act. Further, the Commission is required under IC 8-1-2.6 *et seq.* to consider the benefits of local exchange competition in a manner consistent with Indiana policies on universal service, competitive fairness, non-discrimination and the efficient and economic provision of telephone service. Toward that end we make the following interim findings and determinations.

(A). Resale. The Commission determined after its initial review of the Report that resale of existing services was a good place to begin its enormous task of processing of this Cause. This determination was almost immediately validated upon the enactment of the Federal Act. More specifically, the Federal Act itself dictates that bundled resale shall occur and the types of information to be considered by this Commission when presented with a resale tariff from a local exchange provider. When read in its entirety, the Act may exempt certain rural local exchange providers from certain requirements of Sections 251(b) or 251(c). We, therefore, will limit our focus to those utilities for which there is no possibility of an exemption or for which no exemption has been or can be sought.

This Order deals with "bundled resale" of retail local exchange service and related retail services, as discussed and recommended by the Executive Committee. The Commission finds that it is reasonable to distinguish between the resale of bundled retail services and the resale of unbundled wholesale (or retail) services, network elements, components, functionalities, or facilities. This is consistent with Subsection 251(c)(4) of the new federal Telecommunications Act of 1996, which requires incumbent LECs (ILECs)[1] "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers," with certain exceptions, which will be discussed later. This Interim Order is not applicable to unbundled network elements, components, functionalities, or facilities. The Commission will address these issues in future Orders in this Cause or in other proceedings.

Considering the Federal Act, the arguments presented by the parties, and the issues and information presented via the Executive Committee Report and testimony, the Commission now proceeds with

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[1] NOTE: In this Order, we will generally use the following designations for providers of local telephone services: "ALEC" (Alternative Local Exchange Carrier) and "ILEC" (Incumbent Local Exchange Carrier).

the difficult task of making its policy determinations regarding resale of bundled telecommunications services in the local market.

(i). Definition of "Resale". Under Sections 251(b) and 251(c)(4) of the Act, all LECs have the duty "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of their telecommunications services," and ILECs have an affirmative duty "to offer at wholesale rates[2] [to other carriers] any telecommunications service that the [ILEC] provides at retail to subscribers who are not telecommunications carriers"[3] [emphasis added]. However, this Order will focus only on the resale of local exchange service and related retail services.

Given that Ameritech and GTE may not qualify for exemption under the Act, Ameritech and GTE (and any other ILEC that has not applied to this Commission for an exemption, suspension, or modification of certain requirements contained in Section 251 of the Act) are hereby authorized, subject to the filing for certification and the other terms and conditions of this Order, as discussed more fully below, to resell each other's retail local services, restricted to the underlying ILEC provider's service territory.

In this Order, we are authorizing the resale of all of the retail local exchange services of an incumbent LEC by one company (either ILEC or ALEC) in the service territory of such incumbent LEC, subject to the exceptions which will be discussed later.

(ii). Services Subject to Resale. On or before July 24, 1996, Ameritech, GTE, and all rural LECs choosing not to file requests for exemptions, suspensions, or modifications should file with the Commission's Engineering Division wholesale tariffs containing wholesale rates which have the effect of eliminating all resale restrictions in their current local exchange retail tariffs, subject to the exceptions and restrictions specifically permitted by the Commission. The proposed wholesale tariffs should mirror

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[2] Section 252(d)(3) of the Act sets forth the methodology for ILECs to use in calculating these wholesale rates, which must be approved by this Commission, consistent with the relevant portions of the Act.

[3] Section 3, Definition No. 46 [Act], defines the term "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." The term "telecommunications," in turn, is defined in Definition No. 43 as "the transmission, between or among points specified by the uses, of information of the user's choosing without change in the form or content of the information as sent and received."

and replicate in total Ameritech's, GTE's, and the affected rural telephone companies' retail rate structures, including all discounts in their retail offerings to end users, less all of the "costs to be avoided" under Section 252(d)(3), to be discussed below. Such wholesale tariffs shall publicly disclose all of the actual rates and charges which an ALEC or ILEC reseller must pay the underlying ILEC for the resale of a given service. No ILEC which is required to file a local wholesale tariff with this Commission may discriminate against any reseller in either the rates, charges, terms, or conditions of its wholesale tariff, except for those restrictions specifically allowed by the Act or by this Commission.

All ILECs who are not otherwise exempted by this Commission under Section 251(f) of the Act shall make available for resale any packages of retail services (*e.g.*, a package of basic local service plus certain vertical services or custom calling features) which they make available to their own retail customers. ILECs need not create special packages of services available only for resale if they do not offer those same packages to their own retail customers.

In general, but subject to the Commission's findings in this Order on "service use restrictions," in any dispute over whether or not an ILEC should be required to make available a particular retail service for resale, and/or whether the ILEC should do so at wholesale rates, the burden of proof shall be on the ILEC to show why a particular service should NOT be made available, and/or why it should NOT be made available at wholesale rates. This is clearly consistent with both Section 251(c)(4) of the Act and, by implication, IC 8-1-2.6-1(4).

(iii). Services **Not** Subject to Resale. All required wholesale tariffs must include all telecommunications services offered to end users at retail, with the following exclusions: individual components of a packaged service offering, joint tenant service, grandfathered services[4], promotional offerings, and carrier access service.

The Act provides little guidance on the appropriate treatment of certain contracts or "agreements" which the ILEC may have with one or more retail customers. In Indiana, these contracts fall

[4] GTE's Extended Area Service Distance Tariff is grandfathered; however, the EAS Adder is in addition to the rates for access lines and is applicable for purposes of determining the wholesale local exchange rate. GTE should clearly indicate on its wholesale tariff that the EAS Adder is applicable in a resale setting.

into two main categories[5]: Individual Customer Arrangements (ICAs)[6] and Customer Specific Offerings (CSOs). These contracts are permitted in certain instances under Indiana state law (IC 8-1-2.6). Because services offered under these CSO, ICA, and ICB contracts are generally not publicly available, the services do not meet a strict reading of the definition of "retail Service" under the Act. Therefore, we find that ILECs are not required to make these contract services available for resale.

(B). Pricing and Costing Issues. Several parties have argued in the Executive Committee Report that the ILECs should not be required to make available for resale those retail services which the ILECs claim are priced below cost. Several witnesses said cost should be defined as: Total Service Long Run Incremental Cost ("TSLRIC"). We have insufficient evidence and information on the issue of the calculation of cost so we cannot make a finding at this time. However, we do not believe such an analysis is necessary for several reasons. First, the Act clearly tells us that we must use retail rates less "avoided cost" [See Federal Act, Sec. 252(d)(3)]. Therefore, we have little flexibility under the present circumstances. We do recognize there may be an important issue now raised by certain parties. Nonetheless, regardless of the extent to which an ILEC's local retail service is, in fact, priced below its costs, the ILEC should be no worse off after subtracting its avoided costs (for facilities, services, elements, or functions no longer provided or performed by the ILEC) than it currently is. Secondly, we make this interim determination because we have received little, if any, cost support information for any ILEC's local exchange service and related retail services in recent years, even though we are administratively aware of the tariffs on file at the Commission. In addition, it is clear from the evidence that there is not a uniform "approved" cost study methodology for use in calculating current local retail rates in Indiana. Thus, we currently have no basis for finding that any ILEC local retail services are priced below TSLRIC. Finally, this assertion by certain ILECs that their retail rates are insufficient seems better

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[5] In Consolidated Cause Nos. 39948 and 40130, the Commission recently authorized a two-year trial in which MCI may utilize a third type of contract for certain ["Centrex-like"] and other services which it resells in portions of the Indianapolis local calling area: the so-called "Individual Case Basis" (ICB.) pricing.

[6] The Commission authorized Ameritech to offer certain services under ICAs in the June 30, 1994, "Opportunity Indiana" Order in Cause No. 39705, through December 31, 1997. Ameritech is the only ILEC currently authorized to provide ICAs.

left for consideration as part of company-specific rate filings before this Commission than as part of this Order.

For all of the foregoing reasons, the Commission finds at this time that the affirmative duty to make available for resale a particular local retail service under the Act is not limited by any claims that the retail service in question is priced "below cost," "below TSLRIC," or "below marginal cost;" or is "not recovering its contribution," etc.

(i). Calculation of ILECs' Wholesale Rates for "Bundled" Local Retail Services. As stated earlier, Section 252(d)(3) of the Act sets forth a basic formula ILECs must use in calculating the wholesale rates, which thereafter requires Commission approval. Section 252(d)(3) states that:

> For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the [incumbent] local exchange carrier.

This above formula should be followed in all filings of the wholesale tariffs to be filed on July 24, 1996, as provided for elsewhere in this Order.

The issue of a single appropriate methodology for costing calculation was hotly disputed. Several parties claimed Total Service Long Run Incremental Cost ("TSLRIC") should be used for all costs. Others pointed to the Act, which indicates the starting point for arriving at the appropriate wholesale rate is the underlying ILEC retail rate, and that the next step is to subtract those "costs to be avoided" listed in Section 252(d)(3). The Act does not indicate how these "avoided costs" should be determined and we therefore will allow the respective parties the opportunity to present their interpretations (including detailed cost support) in their subsequent filings provided for in this Order. We will review each such filing and reach a determination at the appropriate time.

It is clear, however, from a review of Section 252(d)(3) that the wholesale rate which an ILEC charges for a particular service cannot be higher than the corresponding retail rate for the service

in question.[7] Another practical observation is that, were an ILEC not to pass through decreases in its corresponding retail rates to its wholesale (resale) customer(s) (after the wholesale rates have been reviewed and approved by this Commission), the underlying ILEC's retail rates potentially could be lower than its wholesale rate for the same service. Under this potential scenario, the ILEC would have an unfair price advantage over the competing reseller(s). The bundled reseller, being dependent upon an underlying ILEC's facilities to provide the service, could not lower its own retail rates below the price floor (which we have herein set at the wholesale tariff) in order to match the ILEC's retail rates without cross subsidizing the service in question from another service(s) (e.g., long distance, video, etc.). We, also, herein find that it is necessary to prohibit such cross subsidizations. Therefore, we find and determine that any subsequent reductions in the retail rates of the underlying ILEC should be automatically flowed through to reduce the corresponding bundled wholesale resale rate. We further find that an ILEC must flow through to its wholesale rate, in their entirety, any and all decreases in the retail rates, and that prior to flowing through any increases, an ILEC must provide detailed cost support to this Commission and receive the approval of this Commission. We find that, under no circumstances may the amount of the increase which an ILEC flows through exceed the amount of the increase in the retail corresponding rate.

(ii). Calculation of ALECs' Retail (Resale) Rates for Bundled Services. Based upon our review of the Executive Committee Report, we are not persuaded that an imputation requirement, *per se*, is either necessary or appropriate for resellers of local services. However, we are concerned about the possibility that a local reseller (either an ALEC or an ILEC) could set its retail rates lower than the underlying wholesale rate and cross subsidize its retail (resale) rates with revenues from other services which the reseller may offer (*e.g.*, long distance services). This concern leads us to conclude that there is a need for a price floor for ALEC resellers. We find that the price floor for any ALEC reseller's retail rate shall be the underlying ILEC's wholesale rate for that particular service. This, in part, addresses certain concerns raised regarding potential abuses of one-stop-shopping (*e.g.*, cross subsidies).

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[7] Based upon our review of the Act, there is insufficient support for us to conclude that Congress has authorized this Commission to determine the ILEC wholesale rates based upon "net avoided costs," as advocated by several members of the Executive Committee.

(iii). ILEC Imputation. As the local telephone market in Indiana takes its first steps toward full and fair competition, it is appropriate to consider whether it is necessary or appropriate to set a retail price floor for ILECs - *i.e.*, to set imputation requirements or policies for ILECs. At this time, we believe that the requirements that (1) ILECs reflect, in their wholesale rates, any decreases in the corresponding retail rates and (2) resellers establish a price floor limited to the wholesale rate for the service may eliminate the need for an imputation requirement in a bundled resale environment, at least in the short run. It is likely that, in a possible future environment of facilities-based local competition and unbundled ILEC facilities, we would need to revisit this determination. In addition, it is possible that forthcoming Federal Communications Commission rules or our own experience in implementing bundled resale may also lead us to revisit this conclusion.

(C). Existing Service Territories and Extended Area Service (EAS). This initial Interim Order requires that any new entrant who desires to provide resale services shall provide service to a customer including a flat-rate, non-toll option which includes service to the same local exchange and EAS local calling area currently served by the underlying ILEC.

We found in Cause No. 40097[8] that Extended Area Service (EAS) may not be extended through resale beyond the two specified exchanges in any given EAS route. The Commission recognizes that this policy will need to be reviewed as local exchange markets evolve to an increasingly competitive environment, and local exchange providers strive to differentiate their products. We, therefore, intend to revisit this issue, including appropriate compensation arrangements, in a later hearing(s). In this Order, however, we believe certain clarifications are necessary about the applicability of 170 IAC 7-4, et seq., repackaging of EAS by the ILEC, and the existing intercompany settlement agreements in a resale environment.

170 IAC 7-4, et seq., contains the guidelines and procedures that the Commission has approved and end user customers may use to request expansion of their local toll free-calling area. The Final Report of the Executive Committee, at pages 25 - 26[9], reveals the

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[8] In re: The Matter of the Investigation on the Commission's Own Motion Into Any and All Matters Relating to Extended Area Service, As Defined by 170 IAC 7-4, et seq., Cause No. 40097 (June 21, 1996).

[9] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 25 - 26.

parties' disparate positions about the applicability of the Commission's current EAS examination and implementation procedures to new entrants. We agree with those who support continuation of our current EAS procedures, and find that doing so would be in the public interest. We will, however, clarify the application of 170 IAC 7-4, et seq. The Commission's EAS examination and implementation procedures must be a coordinated effort between an ALEC reseller and the ILEC. This restriction means that all end users in the affected local exchange area should have an opportunity to participate in the EAS examination and implementation procedures under IAC 7-4, et seq. Since all customers in a local exchange area are affected by the establishment of EAS by the underlying carrier, we find it is important and beneficial for these end users to be part of the EAS implementation process: including petitioning and balloting. In dealing with requests for new EAS, the Commission expects the ALEC resellers and ILECs to act cooperatively and comply with our existing procedures.

As stated earlier, we believe that, as there is a transition to a competitive local exchange market, providers will attempt to differentiate themselves from other providers by offering different, new products or repackaging existing services. In the Order in Cause No. 40097, issued June 21, 1996, the Commission stated:

> Currently, EAS is not a separate service offered to subscribers who are not telecommunications carriers. Instead, it is a bundled service contained within the local exchange package. For this reason, it currently cannot be made available at wholesale to resellers for the provision of service to non-telecommunications carriers. Thus, were a reseller to provide EAS,... the LEC who would be providing the wholesale service to the reseller wold not be compensated. For these reasons,... It is possible that EAS may be unbundled in the future. At such time, it would become possible to offer it at wholesale to resellers. However, any such unbundling would occur as a result of proceedings in a different docket before this Commission. At such time as the unbundling occurs in a different docket, we find that the definition adopted herein should be revisited.

Cause No. 40097, at 13 (June 21, 1996).

The Commission intends to use this Interim Bundled Resale Order as a vehicle for moving forward with the beginning of unbundling of EAS by the ILECs. As an initial step, we find that the ILECs should have the flexibility to develop and offer optional

'EAS calling packages' that would be smaller in scope than the ILECs' existing EAS calling scope. Such unbundling of EAS will allow end user customers to choose the calling packages that best meet their needs. The unbundled EAS packages should be made available to the ILECs' end user customers in the ILECs' retail tariffs and made available to ALEC resellers in the wholesale tariffs. Additionally, local resellers (both ILEC and ALEC) must offer to their own retail (resale) end user customers, as an option, the ability to call toll-free on a monthly flat-rate basis, anywhere in the underlying ILEC's full local exchange and EAS local calling area.

The definition of EAS that was adopted in Cause No. 40097 is as follows:

> **Traditional extended area service (EAS)**
>
> Traditional EAS is defined as telephone service permitting persons in a given exchange to place calls to and/or receive calls from another exchange at monthly flat or measured rates. Traditional EAS is exclusive to and may not be extended through resale or bridging beyond the two specified exchanges in any given EAS route.
>
> (Cause No. 40097, at 12.)

Although the Commission will permit the ILECs to begin the initial unbundling of EAS in this Order, we will defer the consideration of the issues of extending the use of EAS beyond the two exchanges through resale or bridging to further proceedings. We intend to revisit this issue, including appropriate compensation arrangements, in a future hearing(s). Therefore, the Commission finds the existing EAS definition adopted in Cause No. 40097 should remain unchanged and in effect.

In Cause No. 40097, the Commission found that:

> ... we find that existing arrangements for EAS compensation should be maintained for a reasonable period until they are replaced by new agreements, and that in no case should they be terminated, through adequate notice provisions of such agreements, unless such notice is provided after August 8, 1996 when the new Federal rules are promulgated by the FCC.
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> (Cause No. 40097, at 17.)

We see no reason to alter this directive in this Interim Resale Order.

(D). Service Use Prohibitions and Restrictions.

(i). ILEC. As stated earlier, Subsection 251(c)(4) of the Act requires Incumbent LECs ("ILEC") "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers," with certain exceptions. However, under Subsection 251(c)(4)(B), the IURC may, consistent with applicable regulations prescribed by the FCC and under certain circumstances, "prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

The Final Report of the Executive Committee contains questions and responses about the circumstances under which services should not be available for resale and appropriate restrictions.[10] From a review of these comments and the Federal Act, the Commission finds there is a basis for establishing certain service use restrictions. Accordingly, the following resale prohibitions and restrictions shall apply:

(1) Class (category) of service restrictions: resale should be restricted to the intended class of end user customers. This restriction applies uniformly to the tariffed retail categories of local exchange services of the ILEC, e.g., residential, business, Centrex, Centrex-like, PBX, multi-line business, key trunks, ISDN, etc.

(2) Service use restrictions: resale of flat-rate retail local exchange services or any other local exchange services as a substitute for toll access, toll-like or other usage-sensitive services is prohibited.

(3) Extended Area Service (EAS) restrictions: consistent with the definition of EAS adopted by the Commission in Cause No. 40097 on June 21, 1996, EAS may not be extended through resale or bridging beyond the two specified exchanges in any given EAS route.

In addition, although the Commission intends to examine the issues surrounding universal service in a further proceeding, we note the restrictions pertaining to certain retail customers contained in Subparagraph 254(h)(3) of the Act:

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[10] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 92-94.

> Telecommunications services and network capacity provided to a public institutional telecommunications user [elementary or secondary school, a library, or health care provider as those terms are defined in Paragraph 254(h) of the Act] may not be sold, resold, or otherwise transferred by such user in consideration for money or other thing of value.

The Commission finds that the resale of such telecommunications services and network capacity by an elementary or secondary school, a library, or health care provider as defined in the Act should be prohibited.

Because of the potential for the misuse of resold local exchange services, the Commission will allow the ILECs, at their discretion, to place reasonable terms and conditions on the resale of these services in their wholesale tariffs. Such terms and conditions should incorporate the restrictions articulated above and be consistent with this Order and the Act.

(ii). ALEC and ILEC Resellers. Based upon the concerns raised by Ameritech and others relative to potential abuses, ALECs and ILECs that file for a Certificate of Territorial Authority to resell local exchange service will be required to file informational tariffs containing the terms, conditions, rates and charges of their provision of resold services to end user customers. This requirement is also based upon our belief that, as we begin the transition to competitive local exchange markets, such information will be useful to the Commission in judging the benefits of competition, such as introduction of new services and innovative packaging of services. The Commission also finds that the following service restrictions for ALEC and ILEC resellers are in the public interest:

1. These resellers may not use CSOs, ICBs, ICAs or other customer-specific contracts unless the underlying ILEC has been authorized to use such pricing mechanisms. Thus, these resellers may use CSOs, ICBs, ICAs or other customer-specific contracts only to the extent they are utilized by the underlying ILEC and subject to the same filing, review and cost support requirements applicable to the underlying ILEC.

2. These resellers may not discriminate within a customer category when making "promotional offerings." These resellers may, however, file a promotional offering tariff even if the underlying ILEC does not provide such promotional offerings.

(E). Tariff Issues

(i). ILEC 'Wholesale' Tariffs. Section 251(b) of the Act contains the obligations of all local exchange carriers and specifies that each local exchange carrier has "[t]he duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations, on the resale of its telecommunications services." This duty applies to all local exchange carriers, including those local exchange carriers that qualify as "rural telephone companies" under the Act. Although rural telephone companies are automatically exempt from certain additional obligations of incumbent local exchange carriers articulated in Section 251(c), rural telephone companies must comply with the duties contained in 251(b), including resale, unless they apply for and receive a suspension and/or modification of these duties from this Commission under Section 251(f)(2).

The Commission is aware of two rural telephone companies that have elected to file for suspensions or modifications of certain requirements contained in Sections 251(b) and 251(c) of the Act, namely: Smithville Telephone Company, Inc. - Cause No. 40420 and Northwestern Indiana Telephone Company, Inc. - Cause No. 40443. We are also administratively aware that some other rural local exchange companies have expressed an intent to file for such suspensions and/or modifications, following the issuance of a Final Order in Cause No. 40420, which must be issued on or before September 5, 1996, under the time frame specified for determining suspensions or modifications in the Act. We believe it would be an inefficient use of resources to require these rural telephone companies to file a resale tariff, if they plan to file for a suspension and/or modification of the requirements of the Act with the Commission, in the near future. Therefore, those rural telephone companies that intend to file for a suspension and/or modification under Section 251(f)(2) must file a "letter of intent to file" for a suspension and/or modification with the Commission in lieu of the resale tariff. Such letter should be filed in this instant Cause on or before July 24, 1996, with copies being served on the Commission's Engineering Division Assistant Chief and the Office of the Utility Consumer Counselor, and clearly describe the intentions of the rural telephone company to file a petition for a suspension or modification, including the anticipated petition filing date.[11] Those rural telephone companies that choose not to

[11] In order not to delay the opening of local exchange markets to resale, all petitions for suspension and/or modification by rural telephone companies that do not desire to file resale tariffs must be filed with the Commission on or before September 23, 1996.

file a "letter of intent to file" are ordered to file a resale tariff as described below on or before July 24, 1996.

Ameritech, GTE, and those rural telephone companies that choose not to file a letter of intent to file or are otherwise exempted, should submit their proposed wholesale tariffs to the Commission's Engineering Division on or before July 24, 1996. Any interested party should contact the Commission to obtain copies of these filings or notify the prospective filer in advance for a copy. Such resale tariffs must include all telecommunications services offered to end users at retail, with the following exclusions: individual components of a packaged service offering, joint tenant service, grandfathered services[12], promotional offerings, and carrier access service. For administrative ease: (1) the wholesale tariff of Ameritech shall include all telecommunications services offered to end users at retail, including BLS, BLS-Related and Other Services, and (2) if an EAS surcharge currently applies in addition to a local exchange rate for EAS established under 170 IAC 7-4, et seq., it should be clearly indicated in the ILEC tariff. The proposed wholesale tariffs should mirror and replicate in total Ameritech's, GTE's, and the affected rural telephone companies' retail rate structures, including all discounts in their respective retail offerings to end users, less the various "costs to be avoided" under Sec. 252(d)(3). Along with the tariff filings, Ameritech, GTE and the affected rural telephone companies shall also include detailed cost support information that will be treated as public information. Tariff restrictions and costing methodology shall conform to Finding 5(B)(i) and Finding 5(D)(i). Parties may file comments about the proposed wholesale tariffs on or before August 7, 1996. A Technical Conference on any filing herein, if requested by an interested entity or determined necessary by the Commission, will be noticed and held as soon thereafter as is practical.

(ii). ALEC and ILEC Resale Tariffs. All ALEC resellers seeking certification or ILECs who seek additional certification from this Commission to operate as resellers should file their respective proposed informational retail tariffs with their certification petitions. Such proposed informational tariff should incorporate the restrictions specified herein. Future changes in the informational tariffs will be accomplished upon 10 days notice to the Commission's Engineering Division.

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[12] GTE's Extended Area Service Distance Tariff is grandfathered at this time. However, the EAS Adder is in addition to the wholesale rate(s) determined for access lines and should be added as part of the determination of the bundled wholesale local exchange rate. GTE should clearly indicate on its wholesale tariff that the EAS Adder is applicable.

(iii). Term and Volume Discounts. In the Report there was indication that certain entities may want the flexibility to offer or obtain term or volume discounts for resellers, below the wholesale rates pursuant to the Act. Any such term or volume discounts may be contained in either the ILEC's proposed wholesale tariff or in agreements negotiated pursuant to the Act and thereafter approved by this Commission. We find that if an ILEC chooses to establish generic term and volume discounts, the underlying ILEC should include the terms and conditions for these discounts in its July 24, 1996, wholesale tariff filing. These proposed term and volume discounts, whether contained in tariffs or agreements, shall be reviewed by the Commission to determine if they meet the requirements of the Act and are in the public interest.

(F). Certification. The Executive Committee members appeared to be in general agreement that certification is needed before an entity can provide service in Indiana. There was some disagreement as to how such certification should be given to the parties and in fact we currently have pending several petitions requesting that the Commission summarily grant certain entities certification or indicate no such certification is required. While we do not want to address the merits of those particular petitions, the Commission does find in this generic proceeding that certification is needed before a reseller can provide resold services. We also find and determine that the public interest dictates a need for an expedited process to provide certification on a uniform basis. However, this Commission is a creature of statute and bound by laws of the State of Indiana unless and until they are amended, repealed, found unconstitutional, or otherwise preempted by federal law. Indiana Code Section 8-1-2-88 requires that in telephone certification matters, the Commission is required to follow certain procedures. However, the Legislature also recognized that the telephone industry is somewhat unique and requires certain regulatory flexibility. I.C. 8-1-2.6 provides the Commission with vast discretionary authority to establish certain procedures which would enhance and encourage competition in the telephone industry.

We have been invited by several parties to abandon the requirements of 8-1-2-88 based upon a conclusion that the hearing process and other regulatory proceedings under Section 88 are preempted and/or prohibited by the Act as being a barrier to competition. We decline the invitation. The Act specifically goes to great lengths to preserve State laws such as 8-1-2-88 wherein public interest issues are to be considered. However, having recognized this, the Commission does believe that this certification question falls squarely within the Commission's

discretionary authority under 8-1-2.6 and may be addressed through a process different from that prescribed by IC 8-1-2-88. Therefore, we find that an expedited review process is called for in these matters. Nevertheless, the Commission believes there continues to be a compelling interest in reviewing applications for a Certificate of Territorial Authority ("CTA") to ensure that the public interest is served. The residents in the State of Indiana, like those in the entire country, have come to rely on a high quality of telephone service. To take any steps which may erode such quality of service would be detrimental not only to the citizens of the State but the underlying infrastructure which supports the economy in the State of Indiana. Dependable, quality phone service is vital to the well being of the State and its residents.

In light of the above determination that an expedited review process is appropriate, we set forth the following procedure to be followed by each and every entity seeking to provide local telephone exchange service in the State of Indiana if it is not currently authorized to do.

The Executive Committee Report contains various questions and responses regarding the applicability of the "public utility" classification, as contained in Indiana law, in both the short run and the long run.[13] The Indiana General Assembly has established that any entity that "owns, operates, manages, or controls any plant or equipment within the state for the conveyance of telegraph or telephone messages," is a public utility (IC 8-1-2-1(a)). This classification is independent of market share or of when an entity meeting the definition entered a particular market. The Executive Committee Report provides no compelling reason or need to modify this definition. Sprint/United's contention that, "as competition develops, there will be a general movement away from 'public utility' status balanced by a movement toward the status and obligations associated with commercial enterprises, for incumbent LECs and new entrants as well"[14] raises some issues which may warrant further discussion. However, Ameritech correctly points out that, "as a practical matter, the definition of 'public utility' found in the Indiana Code will remain the same until such time as the Indiana legislature deems it appropriate to change that

[13] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 9-12.

[14] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 10.

definition."[15] Because the current definition has not been changed, we now find that any ILEC or ALEC that "owns, operates, manages, or controls any plant or equipment within the State of Indiana for the conveyance of telegraph of telephone messages" will be classified and considered a public utility.

Every entity needs to obtain a CTA before having the ability to provide service in Indiana. To obtain a CTA, the entity must file a verified request together with evidence to support the entity's financial, technical, and managerial abilities to provide such service. The entity should also present evidence indicating the type, means and location of service the entity proposes to provide, and why such service would be in the public interest and in furtherance of the goals of full and fair competition. In reviewing any financial information provided by a prospective entity, the Commission will give due regard to considerations of an entity's ability to maintain the Commission's expectations regarding high quality telephone service. After receiving such a verified petition and supporting evidence, the Commission will thereafter publish notice that a request for a Certificate of Territorial Authority has been made. If any other entity chooses to oppose such a request, that entity should file notice with the Commission and be prepared to offer evidence to support their particular opposition as to why any of the four criteria set forth above have not been met through the verified petition process of the applying telephone utility. Such an opposing party should file its opposition in written form within 30 days after a request for a CTA has been made with the Commission.

Having settled the above, the Commission also feels compelled to point out that even though this initial order addresses the process of bundled resale, any entity interested in any other form of competition may avail itself of an independent specific filing to be considered by this Commission much like has already been done by MCI in Cause No. 39948/40130; AT&T, Cause No. 40415; TCG Indianapolis, Cause No. 40478; and others. The Commission will not and can not under the Act prohibit an entity from filing such petition for the Commission's consideration. However, it is the Commission's intent to pursue, generically, the issues of competition in this Cause as systemically and expeditiously as possible. Nevertheless, the parties should be aware that the Commission has several obligations under the Federal Telecommunications Act of 1996. The Commission will process any requests or filings on a case-by-case basis.

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[15] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 9.

All ILECs and ALECs (including all resellers and any ILEC or ALEC affiliates and/or subsidiaries which have been classified as "public utilities" by this Commission), should be subject to the annual public utility fee, as described in IC 8-1-6-1 *et seq.*, and in any applicable Commission or IURC Staff guidelines, letters, etc.; and shall observe any related procedures, requirements, terms, or conditions described therein. Therefore we find that all ILECs and ALECs who are hereinafter certificated under this process should pay the public utility fee under IC 8-1-6-1 *et seq.*

At this time, we are not prepared to rule on whether those ALEC resellers that are not currently required to file an annual, updated copy of the FCC Form M or other financial report with this Commission should be required to do so. The FCC Form M asks for respondents to submit certain accounting, financial, and other data based upon the so-called "Uniform System of Accounts" ["U.S.O.A."]. This, in turn, presupposes that the entity submitting the Form M Report, in fact, keeps its regulatory books and records in U.S.O.A. format. At this time, the Commission is not prepared to make any determinations regarding the proper accounting procedures and format for new entrants (*e.g.*, U.S.O.A.). Therefore, at this time, we will not require ALEC resellers who are not already doing so to file an FCC Form M or other annual report with us. We would note that we retain considerable discretion under IC -1-2-10 *et seq.* to prescribe specific accounting systems and forms of books and accounts for public utilities in the state of Indiana; and under IC 8-1-2-50 *et seq.* to prescribe specific books, accounts, papers, records, and other documentation to be provided to this Commission, subject to applicable statutes and rules regarding the confidential treatment of certain information. We will revisit these issues at a later date, as we deem appropriate.

(G). Application of Commission Rules and Regulations. All ILECs, and all ILEC and ALEC resellers, as well as any affiliates or subsidiaries thereof over which the Commission has jurisdiction, shall be subject to all applicable Commission rules and Orders, unless explicitly exempted by this Commission.

(H). Universal Service. The Commission will make no determination at this time regarding the universal service contributions and other issues not otherwise addressed herein related to universal service until such time as the Federal Communications Commission issues its rules or takes further action.

(I). Billing. The recommendations and testimony of the parties on billing matters with regard to bundled resale fell into two general categories: 1) the billing information needed by the ALEC in order to bill its customers, and 2) the billing of the ALEC

for wholesale services by the ILEC. We will discuss both billing matters and establish procedures for handling each below.

(i). ALEC Customer Billing. Several potential new entrants raised concerns regarding the issue of billing information. They claimed that in order for the ALEC reseller to be able to correctly bill its end-use customers, the underlying ILEC must provide the reseller sufficient detailed billing information that would allow an ALEC to be able to prepare its own customer bill. We agree and find that the ILEC should provide detailed record information for each wholesale exchange service purchased by the ALEC. The information provided by the ILEC must be complete and include enough detail to allow the ALEC to bill its customer for all local and interexchange calls that would normally be processed by the ILEC. This finding applies not only to the ILECs but also to the ALECs and what information, in turn must be shown to the end-use customers.

Some parties in this proceeding have asked us to require the ILECs to modify their billing systems to permit the ALEC reseller to directly bill the interexchange carrier.[16] We decline to do so at this time. It is our intent at this initial phase to begin implementing competitive local exchange actions, of which bundled resale is a logical first step. While we are not currently prepared to order modification of ILEC billing systems, we invite further exploration of this issue in future hearings in this Cause.

We also find that the ALEC is responsible for billing its customers and providing accurate and timely bills, as specified in the existing Commission Rules.[17] As the rules are currently administered, a local exchange telephone utility must separately identify the charges for E911 and InTRAC on each customer's bill. Each ALEC should do the same. If desired, the ALEC may request billing and collection services from the underlying ILEC. We find that such billing and collection arrangements can and should be accomplished through negotiated contracts between the ILEC and ALEC.

To reduce the incidences of fraud and uncollectibles, we encourage serving ALECs and ILECs to propose tariff language about procedures that would allow the monitoring and exchanging of such information between ALEC and ILEC. We are aware of the potential abuses of customers with unpaid balances attempting to switch from

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[16] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 211.

[17] 170 IAC 7-1.1, et seq., Standards of Service.

one local exchange carrier to another and avoid payment. We find that the exchange of appropriate information between affected telephone utilities which would discourage this type of activity is in the public interest and strongly encourage both ALECs and ILECs to cooperate to implement this finding.

(ii). ILEC Billing for Wholesale Services. An ALEC, as a wholesale customer of the ILEC, is responsible for payment of any outstanding wholesale charges. We believe the actual details of how a wholesale bill is rendered and how payment is received are best determined between the ILEC and ALEC, noting that the ILECs have experience in this area, such as billing the interexchange carriers for access services, and that the terms and conditions must be reasonable and nondiscriminatory. Our guidance in the area of billing for wholesale local exchange services between an ILEC and ALEC will focus on that instance when the ALEC fails to pay its wholesale bill. If an ALEC defaults on its outstanding wholesale bill, we find that the ILEC should be permitted to terminate service to the ALEC and provide such service directly to the ALEC's customers. The ILEC should include a clear and concise explanation of its ALEC disconnection policy and procedure in its wholesale tariff. In order to facilitate the Commission's possible communications with the affected customers and prior to disconnecting the ALEC, the ILEC should notify the Commission's Consumer Affairs and Engineering Divisions by telephone call or facsimile transmission of the pending termination of service to the ALEC.

(K). Number Portability. On June 7, 1996, the presiding officers issued a docket entry in this Cause establishing, among other things, a second hearing in this matter and calling for comments from the respective parties on matters related to long term number portability. Those comments were due and received on June 14, 1996. The June 7, 1996 docket entry and the respective comments received June 14, 1996 appear more fully in the following words and figures, to wit:

[H.I.]

The Commission having considered the comments and recommendations of June 14, 1996 now finds that a task force should be established, to be made up of member/representatives from each of the interested parties in this Cause and facilitated by two Commission staff members. The Commission further finds that this task force should review and consider the "Stipulation and Settlement Agreement" attached to AT&T's June 14, 1996 filing. This "Stipulation and Settlement Agreement" is purportedly the document filed with and approved by the Illinois Commerce Commission in Docket No. 96-0089 relating to Illinois' disposition

of the number portability issue. The task force is specifically directed, but not limited to a review and consideration of technological issues related to long term number portability and the associated cost of each technology. Cost recovery and allocation issues will not be addressed in this task force process.

This number portability task force shall immediately be formed and organized by two Commission staff members designated by the presiding officers. The first organizational meeting, which will be monitored and facilitated by these two staff members shall be set for July 11, 1996 in the Commission Offices, Room E306, Indiana Government Center South, beginning at 9:30 a.m., local time. All parties desiring to participate and have input for Commission consideration should send a technical representative who is knowledgeable in this area and authorized by the particular party to discuss, present, decide and make recommendations to the Commission for ultimate action on certain number portability issues. The parties are advised that this may be their only opportunity to present and/or make their respective position(s) and recommendation(s) known and therefore should plan and participate accordingly. The task force shall have the limited authority to meet how and when it chooses but a final report and recommendation should be presented to the Commission on any and all issues generally described above on or before November 8, 1996. Disputes, confusion, or any other matter requiring Commission action or intervention, to allow the task force to accomplish this stated objective, should be formally presented to the Commission as soon as the matter arises.

(L). Quality of Service. As discussed above, quality of telephone service is of great importance to this Commission. Service quality encompasses such technical matters as installation intervals, repair intervals, operator answer time, call completion rates, and transmission quality, as well as, consumer oriented matters like marketing contacts, billing procedures, and complaint procedures. Our review of the positions of the parties set forth in the Report indicates that there was general agreement about the need for maintaining a minimum set of technical and consumer oriented service quality standards.[18] It appears that the Commission's existing service quality standards, found at 170 IAC 7-1.1, et seq., are considered to be an appropriate benchmark for ILECs and ALECs, although there was discussion that the current rules may need to be updated commensurate with a competitive environment. Further, the parties felt that all local carriers

[18] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 77.

have a responsibility to notify their customers of their rights and responsibilities as consumers of telephone services, through the local directories, bill inserts and pamphlets. We agree with this position and find that all local carriers have an affirmative responsibility to notify their customers of their rights and responsibilities as consumers of telephone services, through the local directories, bill inserts and pamphlets.

Based upon our consideration of the parties' recommendations on this issue, we find that ILECs should continue to comply with all the service standards iterated in 170 IAC 7-1.1, et seq. ALECs should also comply with 170 IAC 7-1.1, et seq., including the technical and consumer oriented rules. To comply with the technical service quality standards, the ALEC should make arrangements with the ILEC that are consistent with meeting the technical service quality standards for its customers. In addition, ILECs and ALECs must comply with any applicable Indiana Statutes concerning quality of service, e.g., I.C. 8-1-2-54, I.C. 8-1-2-58, etc.

(M). Emergency Services/Society Services. Although there was general agreement among the parties that access to emergency services and society services (*e.g.*, 911, E911, and InTRAC) should be maintained in a competitive environment, we will take this opportunity to reiterate and reinforce this conclusion. We believe it is crucial that the public safety be preserved, regardless of service provider. Provision and maintenance of these services will require cooperation between the service providers; nothing less than complete cooperation will be acceptable to this Commission.

To accomplish this charge, we find that the underlying ILECs must provide the ALECs access to 911, E911, and InTRAC services, to the extent and in the manner these services are available to the ILECs' own customers. In addition, ILECs and ALECs are responsible for the timely exchange of any and all information needed to update appropriate databases. The information should be exchanged in a format that is acceptable to both providers and facilitates the accuracy and timeliness of the databases. Any disputes between providers regarding formats or timing should be immediately referred to the Commission for resolution.

(N). Directories/Directory Listings. The Commission has established a rule regarding white pages directories that is found at 170 IAC 7-1.1-9 and states in part:

> (A) Telephone directories shall be regularly published and shall normally list the name, address and telephone

number of all customers located in the exchange(s) contained in the directory, except the public telephone numbers and telephone numbers unlisted at the customers request. All telephone...
(B) Upon issuance, each customer served by a directory shall be furnished one (1) copy of that directory for each main station or trunk and, upon request, additional directories not to exceed the total...
(170 IAC 7-1.1-9(A) and (B))

This Rule insures that customers have access to all telephone numbers that may be called by that customer on a local toll-free calling basis.[19]

We note that the Federal Act also gives guidance about the provision of directory listings at Subsection 251(b)(3), with the requirement that all local exchange carriers must provide dialing parity, which includes the duty to permit all competing providers of telephone exchange service and telephone toll service to have "nondiscriminatory access to...directory listing" and at Subsection 222(e), which states that subscriber list information should be furnished "under nondiscriminatory and reasonable rates, terms and conditions."

Review of the testimony about directories and directory listings indicates that the parties had several dissimilar opinions about the provision of directories and directory listings by and between the incumbents and new entrants.[20] Although there appears to be a generally held belief that the provision of directories serves a public interest obligation, the parties dispute who should have to meet the obligation and how it should be met. In addition, there is a question about a directory provider's obligation to publish information about its competitor in its directory. The Commission addresses these three issues below.

First, we find that, for purposes of resale as defined in this Order, the ILEC should include the ALEC customer listings in its directories at no charge for standard listings, comparable to those

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[19] The Commission recently clarified that "the Rule should be construed to require the exchange of all listing information for all areas that can be called on a local call toll free calling basis, and that the information should be included in the directories." See Cause No. 40097, In re the Matter of the Investigation on the Commission's Own Motion Into Any and All Matters Relating To Extended Area Service, As Defined By 170 IAC 7-4 Et Seq, approved June 21, 1996, at 15.

[20] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 27 - 30.

provided free of charge for its own retail customers.[21] Any special requests from the ALEC for listings or directories should be negotiated between the ILEC and ALEC, giving consideration to the relevant language of the Federal Act. The obligation of the ILEC to include the ALEC customer listings is dependent on the ALEC providing the appropriate customer information in a compatible format and timely manner to the ILEC. We find that ALECs should be responsible for providing this information to the ILEC, under reasonable terms and conditions to be determined by the ILEC. The finding herein does not preclude ALECs from publishing and providing their own directories, subject to the conditions of 170 IAC 7-1.1-9.

Second, consistent with our Order in Cause No. 40097 and the Federal Act, we find that requests for subscriber list information between ILECs/ILECs, ILECs/ALECs and ALECs/ALECs should be priced at the cost of production of the list, which is the long-run incremental cost of: providing a magnetic tape, selling the listings at a per-listing charge, furnishing camera ready reproduction pages, or supplying bound directories.

Finally, we find that, for purposes of resale at defined in this Order, all ILECs should be required to publish the listing information of certificated ALECs in their directories, subject to the following conditions: White and Yellow Pages listing information should include the ALEC listing in a manner comparable to that provided free of charge for business retail customers. ALECs desiring to list information in the "information pages" of the ILEC White Pages should be permitted to do so through negotiated compensation arrangements with the ILEC.

While we imply above that all negotiations would be between the ALEC and ILEC, we do recognize that negotiations may be completed between the ALEC and the actual publisher of the directory, which may not always be the ILEC. Nevertheless, the ILECs and ALECs must still comply with the directory/directory listings obligations as determined above by the Commission.

(O). Operational Interfaces. Several parties expressed concern about the quality of operational interfaces needed between the ILEC and its wholesale customers. Information may be exchanged between the ILEC and ALEC in a variety of ways which may include, but are not limited to, electronic interfaces, technical interfaces, or access to databases. These parties stated that (1)

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[21] Unlisted and/or unpublished telephone listings should continue being handled in the same fashion and manner as the underlying LEC is currently handling them.

effective resale competition could not be achieved unless a reseller can provide the same service, including the same quality, as the wholesale ILEC does when it provides the underlying retail service to its own end user customers and (2) the importance of equal operational interfaces is essential to the development of resale competition. We believe such concerns about the need for equivalent operational interfaces to be valid.

We find that the ability to utilize electronic access, technical interfaces, or access to databases to place service orders, receive phone number assignments, receive information necessary to bill the ALEC's customers, and to inform the ILEC of cases of trouble should be made available to each ILEC wholesale customer, where technically and economically feasible. If necessary to fulfill this responsibility, the ILEC will provide appropriate interface specifications to the ALEC. Also, in order to ensure that the needs of new entrants are satisfied, we find that all ILECs are required to provide to resellers, as an integral part of their resale service offering, all operational interfaces at parity with those the ILECs provide to their own retail customers, whether directly or through an affiliate. Further, Ameritech and GTE North and all other telephone utilities not otherwise exempt under the Act will be required to file, with their implementing tariffs, a report demonstrating their compliance with this directive. To the extent the ILECs contend they are unable to fully and immediately implement operational parity, they should be required to submit a comprehensive plan, including specific timetables, for achieving compliance.

(P). Illegal Changes in Subscriber Carrier Selections (Slamming). The definition of slamming was augmented and expanded in the Act when Congress stated:

> No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission [FCC] shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

1996 Act, Sec. 258(a).

In addition, at page 216 of Section III (Volume I) of the Final Report, the responses to questions about the possibility of local exchange slamming indicate "it would be reasonable for the Commission [IURC] to adopt similar anti-slamming provisions that the Federal Communications Commission has adopted for interLATA

toll presubscription..." We agree that anti-slamming provisions should be adopted to prohibit unauthorized service transfer, including the unauthorized termination, of local exchange service. We find that such anti-slamming provisions would be in the public interest, and herein approve and institute interim local exchange anti-slamming provisions.

For local exchange service provision, the following interim conditions concerning unauthorized service termination and transfer shall apply to both ILECs and ALECs:

> An ILEC or ALEC will be held liable for both the unauthorized termination of service with an existing carrier and the subsequent unauthorized transfer to their own service. ILECs and ALECs are responsible for the actions of their agents that solicit unauthorized service termination and transfers. A carrier who engages in such unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. All billings during the unauthorized service period shall be refunded to the applicant or customer. The ILEC or ALEC responsible for the unauthorized transfer will reimburse the original carrier for reestablishing service at the tariff rate of the original carrier.

The Commission plans to revisit the interim local exchange anti-slamming provisions above after the FCC has completed its proceedings pursuant to the Congressional directions of the Act. Depending on the rules promulgated by the FCC, we may modify these interim provisions to include specific verification procedures, monetary penalties or other processes adopted by the FCC or found to be more effective in handling slamming complaints.

(Q). Miscellaneous Issues.

(i). Relationship of "Opportunity Indiana" to the Federal Act. While we will not engage in a comprehensive review of the "Opportunity Indiana" plan for Ameritech (Cause No. 39705) in this Order, there is one potential conflict between the 39705 plan and the Telecommunications Act of 1996 which warrants discussion herein. In Cause No. 39705, the Commission set a price floor for Ameritech's "Other Services" of one percent above the Long Run Service Incremental Cost for a given service ("LRSIC + 1%"). Furthermore, we are administratively aware that Ameritech provides certain "Other Services" under so-called "Individual Customer Arrangements" ("ICA") which are contractual arrangements in which the Company provides a particular "Other Service" at some rate below the tariffed retail rate but above the price floor of LRSIC + 1%. The ICA rate for the end user (contract) customer has

historically been considered confidential, proprietary, and a trade secret by this Commission. GTE and several other ILECs offer various other similar types of services under so-called "Customer Specific Offerings," or "CSOs," in which some or all of the relevant contract rates are also treated as confidential, proprietary, and a trade secret.

As has been discussed several times in this Order, under the Telecommunications Act of 1996, ILECs are required to make each and every retail service (with certain congressionally-specified exceptions) available for resale at wholesale rates, to be determined by State Utility Commissions, such as the IURC, and set equal to retail rates minus certain "costs that will be avoided by the [ILEC]." Thus, the ILEC's retail rate for the requested service is the starting point in calculating the applicable wholesale rate. However, the use of ICAs, CSOs, and other types of special contractual arrangements may allow an ILEC to offer an end user (contract) customer a rate for a particular service which is different than the ILEC's approved wholesale rate for the service in question. These types of contractual relationships may be prohibited under the Act because the reseller is unable to match the ILEC's contractual rate without potentially violating the above established price floor requirement of a similar resale service. However, we need only review the resale language of the Act which indicates resale applies only to retail services **generally available to the public.** By definition, these types of services at issue may not be "generally available" to the public. However, we believe this issue needs further review and we therefore find that all ILECs that do not notify us on or before July 24, 1996, of their intent to seek a suspension or modification under Section 252 of the Act should file, along with their wholesale tariff information, legal briefs or comments on this issue. We will not at this time disturb any previously established and approved special contractual customer situations. However, we will review any new requests for this treatment very carefully to determine their appropriateness under the new Act. Any brief, supporting testimony or other evidence on this issue, whether filed as part of the July 24, 1996 wholesale tariff filing provided for herein, or as part of a new request for special treatment should be limited to a total of 35 pages, including attachments.

(ii). Complaints. In these early stages of local telephone exchange competition in the state of Indiana, there are bound to be many disputes and disagreements involving both ILECs and ALECs and, perhaps, end user customers or their representatives. While we certainly hope that the affected parties can resolve these disputes and disagreements on their own, we realize that may not always be possible. Where appropriate, an

entity may desire the Commission's assistance and expertise and may formally request that the Commission intervene and resolve some or all of the matters in dispute. While we obviously cannot anticipate any and all types of disputes which may arise, neither do we want to prevent any party from requesting our assistance or intervention.

Accordingly, for all ILECs (and any affected affiliates or subsidiaries thereof), and for all ILEC and ALEC resellers (and any affected affiliates or subsidiaries thereof), we herein specifically retain jurisdiction over the entirety of Title 8 of the Indiana Code and other applicable statutes, except to the extent we have explicitly declined our jurisdiction in other proceedings or forums. Similarly, all parties affected by this paragraph shall comply with all Commission rules and regulations promulgated under IC 8-1-1-3, IC 8-1-2.6-3, and other applicable statutes, unless explicitly exempted by this Commission. Finally, all parties affected by this paragraph shall be subject to any decisions rendered by this Commission or the Commission's Consumer Affairs Division, consistent with the statutory language contained at IC 8-1-2-34.5.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Ameritech, GTE and affected rural telephone companies who have not otherwise sought or received exemptions from this Commission under the Act shall file proposed wholesale tariffs with cost support as described in Finding Paragraph 5(B) above with the Commission on or before July 24, 1996. Any other entity may file comments or opposition to any wholesale tariff filings with the Commission about the proposed wholesale tariffs on or before August 7, 1996. A Technical Conference or hearing on any filing herein, if requested by an interested entity or determined necessary by the Commission, will be noticed and held as soon thereafter as is practical.

2. ALEC and ILEC resellers (as defined above in Finding Paragraph 5) must seek certification pursuant to the criteria set forth in Finding Paragraph 5(F) above in the areas in which they intend to resell services and are required to pay the public utility fee as defined in IC 8-1-6-1 *et seq.*

3. ALEC and ILEC resellers shall file informational retail tariffs with this Commission which shall meet and include the requirements set forth in Finding Paragraph 5(a)(iii) & (iv).

4. The findings and conclusions set forth in Finding Paragraph 5(A) through (Q) above not otherwise addressed are hereby approved and adopted on an interim basis.

5. This order shall be effective on and after the date of its approval on an interim basis.

MORTELL, KLEIN AND ZIEGNER CONCUR, with HUFFMAN CONCURRING IN PART AND DISSENTING IN PART IN A SEPARATE OPINION:

APPROVED:

I hereby certify that the above is a true and correct copy of the Order as approved.

JUL 01 1996

Kostas Poulakidas,
Secretary to the Commission

Dissenting Opinion of Mary Jo Huffman
Cause No. 39983
July 1, 1996

Today, I am unable to join my colleagues in approving the proposed order in Cause No. 39983. My responsibility as a Commissioner is to be an impartial finder of facts and to render informed decisions that I believe are in the public interest. As I considered this order in Cause No. 39983, I found myself in the dilemma of not being able to execute that role.

This cause was started two years ago under Indiana Code Section 8-1-2-58 to investigate local competition. Monumental efforts were put into this cause by all the parties including the IURC staff and the members of the Executive Committee headed by Paul Hartman. I sincerely commend all the participants for their efforts.

Despite the dedicated efforts of this group, the conclusion of their investigation came within days of the passage of the Telecommunications Act of 1996. The Executive Committee's Final Report was submitted January 16, 1996. The federal Act was approved February 8, 1996, and evidentiary hearing on the report began February 12. Post-hearing briefs were filed March 8, 1996.

It is my belief that the federal Act takes precedence over the efforts made by the Executive Committee. As a result, the focus of this order should be on the interpretation of the relevant resale provisions of the federal Act as stated in Section 251 (c) (4) and 252 (d)(3).

At the present time, the Commission may or may not have received sufficient evidence from the parties. Page 20 of the Commission's order states that most witnesses at the evidentiary hearing on the Executive Report "cautioned that they were still in the analysis process," regarding the federal Act. Additionally many of the parties indicated that their positions outlined in the Executive Report might change in response to the federal Act.

As a result, I feel the parties had insufficient opportunity to fully analyze the federal Act before filing their post-hearing briefs and submitting to us their positions on competition relative to the Act. Therefore, I believe that I also have insufficient evidence and argument pertinent to the application of the federal Act before me to make an informed decision on bundled resale under the federal Act.

I have long been open about my position that the Commission should quickly begin its efforts toward de-regulation in the telecommunications industry. While this order may be a step in that direction, it is my belief that we are proceeding without a clear understanding of how best to apply the Act upon an evidentiary record which was developed prior to its enactment.

I prefer not to comment on the merits of this order -- it may very well contain the optimum guidelines for our state.

But if it does, it will be a coincidental arrival and not one based on careful analysis of the Act itself. Because this order is based on the Commission's investigation, which preceded the Telecommunications Act, I must respectfully dissent.

Mary Jo Huffman

Commissioner Mary Jo Huffman